

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (DB) No.909 of 2011**

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Parmeshwar Das, son of Late Bhedlal Das, R/o Village – Sakal Gangti,  
Laxmipur, P.S. - Laxmipur, District – Jamui

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Sri Krishna Prasad Singh, Senior Advocate

Mrs. Meena Singh, Advocate

Sri Mithilesh Kumar Singh, Advocate

Sri Bhaskar Shankar, Advocate

Sri Saket Kumar Singh, Advocate

For the Respondent/s : Sri Mayanand Jha, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR**  
**and**  
**HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)**

**Date : 26-04-2018**

1. The present Appeal was filed under Section 374(ii) and 389(i) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “Cr.P.C.”) against the judgment of conviction and sentence of the sole appellant in Sessions Trial No. 149 of 2009 passed by Sri Nand Lal Prasad, learned Additional Sessions Judge (F.T.C. 1), Jamui (hereinafter referred to as the “trial judge”). By judgment dated: 24.08.2011 the learned trial judge has convicted the appellant for commission of offence under Section 302/34 of



the Indian Penal Code, 1860 ( hereinafter referred to as the “I.P.C.”) and by order dated: 27.08.2011 the appellant was sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000/-. In default of payment of fine, he has been directed to further undergo simple imprisonment for six months. The appellant is the elder brother of the husband of the deceased.

2. Short fact of the case is that on 18.09.2008 *fardbyan* of Abdhesh Kumar Ashish (P.W. 8) was recorded by A.S.I. Sri C.P. Jha of Laxmipur Police Station. The *fardbyan* was recorded on 18.09.2008 at 10.30 Hours (A.M.) in the house of Bhagirath Das (P.W. 10) [husband of the deceased] in village: Nimunda Tola Shakal, Police Station: Laxmipur in the district of Jamui. In the *fardbyan* the informant stated that her sister Mala Devi was married with Bhagirath Das about 16 years back in the village Nimunda Tola Shakal, P.S. - Laxmipur, District – Jamui. After the marriage her sister for some time laid peaceful life. However, subsequently, (1) *gotni* of his sister [wife of brother of her husband] Sharmila Devi, W/o Parmeshwar Das (appellant); (2) mother-in-law Jirwa Devi, W/o Bhedlal Das; (3) *Bhaisoor* [ elder brother of husband of the deceased] Parmeshwar Das, S/o Bhedlal Das on some family matters often started to quarrel with his sister and started abusing her. The brother-in-law of the informant for his



livelihood often used to remain outside and when he used to come back he was asking his brother and other family members not to do such act and he used to return back to his work place. In relation to such dispute on number of occasions Panchayati was held in between both sides and in relation to the said dispute earlier they had also gone to the Police Station where personal bond was got executed and undertaking was given that in future no such dispute will be raised. The informant further stated that only one day prior to the occurrence i.e. on 17.09.2008 he had gone to the in-law's house of her sister in the village: Nimunda Tola Shakal where her sister informed that in-law's members always used to quarrel with her and she explained everything to him. The informant with her sister proceeded for the Police Station Laxmipur and while he reached Laxmipur market he had some conversation on telephone with his father and elder brother and on their persuasion the informant with his sister returned back. He was informed by his father and brother that on next morning they will be arriving and they will consider to lodge case. The informant dropped his sister to her in-law's house in Nimunda Tola Shakal and he returned back to his maternal house in Nowathika Shakal and stayed there in the night. On 18.09.2008 in the morning her sister's daughter Puja Kumari, aged about twelve years gave information on mobile



that in preceding night her aunt Sharmila Devi, Jirwa Devi, Parmeshwar Das (appellant) and elder sister of her aunt- Sharmila Devi namely Pramila Devi, W/o Prakash Das and sister of her father -Sushila Devi in the night at about 2.00 hours while she with her mother and sister were sleeping the accused persons dragged her mother from room to *varandah* and by pressing neck her mother was done to death. The informant after getting such information immediately crying and informing this thing to others reached to the in-law's house of her sister in the village- Nimunda Tola Shakal where he noticed that her sister Mala Devi was done to death. Her dead body was lying on *varandah* and all the accused persons were not present in the house where both daughters of sister of the informant near the dead body were crying. Number of villagers were also assembled there. He stated that villagers informed that after death dead body is required to be kept outside the house, and thereafter, with the help of villagers he put the dead body in the courtyard on a cot. Till that time her other family members i.e. mother - Veena Devi (P.W. 9), brother -Murari Kumar Das (P.W. 7) and others had already arrived. Subsequently, Police arrived and recorded his *fardbyan*. He claimed that his sister was killed by her *gotni*, *sash*, *bhaisoor*, sister of *gotni* and *nanad* in a deep rooted conspiracy and after killing and leaving dead



body they fled away. The said *fardbyan* was read by him and also read over to him, after finding it correct this witness put his signature on the *fardbyan*. As a witness to the *fardbyan* his brother Murari Kumar Das ( P.W. 7) also put his signature on the *fardbyan*. On the basis of the said *fardbyan* on 18.09.2008 at 2.30 P.M. a formal F.I.R. vide Laxmipur P.S. Case No. 147 of 2008 was registered for offence under Section 302/34 of the I.P.C. against (1) Sharmila Devi, W/o Parmeshwar Das ( appellant); (2) Jirwa Devi, W/o Bhedlal Das (mother- in- law); (3) Parmeshwar Das (appellant) S/o Bhedlal Das and also elder brother of husband of deceased; (4) Pramila Devi, W/o Prakash Das [ sister of Sharmila Devi - accused no. (1)]; and (5) Sushila Devi, W/o Lakhan Das and daughter of Bhedlal Das equally sister of husband of deceased. After registering F.I.R. investigation was conducted, and thereafter, during investigation the appellant was apprehended and on 31.01.2009 charge-sheet was submitted against appellant (Parmeshwar Das) keeping investigation pending against other accused persons. After submission of charge- sheet, on 13.02.2009 learned Chief Judicial Magistrate, Jamui took cognizance of the offence and on 31.03.2009 case was committed to the court of Sessions, and as such, it was numbered as Sessions Trial No. 149



of 2009. On 30.04.2009 charge under Section 302/34 of the I.P.C. was framed against the sole appellant.

3. During trial to prove its case from the prosecution side altogether ten witnesses were examined. Out of ten witnesses P.W. 1 (Nanhku Das), P.W. 2 ( Basudeo Das), P.W. 3 ( Bhutak Das) all residents of village: Shakal since did not support the prosecution case, were declared hostile. P.W. 8 ( Awadhesh Kumar Ashish) is the informant of the case, P.W. 9 (Veena Devi, was the mother of deceased) and P.W. 10 (Bhagirath Das, husband of deceased) have virtually not supported the prosecution case in the manner in which their statement under Section 161 of the Cr.P.C. was recorded. P.W. 7 (Murari Kumar Das, brother of informant and deceased) is hearsay witness, however, in the case there is only one eye witness, who is non else but the minor daughter of the deceased namely: Puja Kumari, who was examined as P.W. 6. Virtually the nucleus of the case is the evidence of Puja Kumari, which has been corroborated thoroughly by the evidence of P.W. 7 ( Murari Kumar Das), medical evidence i.e. post -mortem report as well as evidence of P.W. 4 (Dr. Anjani Kumar Sinha) who had conducted post-mortem examination on the dead body of deceased and also evidence of Investigating Officer, who was examined as P.W. 5 namely: Chandra Prakash Jha. After examination of the



prosecution witnesses, evidences and circumstances brought against the appellant were explained to him and his statement under Section 313 of the Cr.P.C. was recorded on 28.02.2011 in which the appellant claimed to be innocent and of-course he claimed for producing defence witness, but no defence witness was examined.

4. Sri Krishna Prasad Singh, learned senior counsel, assisted by Smt. Meena Singh, learned counsel for the appellant after referring to entire evidences has argued that the prosecution has not proved its case beyond all reasonable doubt. He submits that the whole case was based on the evidence of a child witness i.e. P.W. 6. According to Sri Krishna Prasad Singh, learned senior counsel, the evidence of P.W. 6 is required to be simply ignored in view of the fact that though this witness at the time of occurrence was only aged about 12 years and even on the date of deposition her age was 14 years, the learned trial judge has not bothered to record regarding the understanding of this witness nor any certificate was recorded by him before taking her evidence on oath. He submits that in case of evidence of child witness it was mandatorily required on the part of the trial judge to record his satisfaction regarding capability of the witness for deposition, only then, he was required to record evidence of such witness. To



corroborate his submission, Sri Krishna Prasad Singh, learned senior counsel, has heavily placed reliance on judgments of the Hon'ble Supreme Court reported in **AIR 1969 SUPREME COURT 53 (The State of Bihar v. Kapil Singh )** and **AIR 1952 SUPREME COURT 54 (Rameshwar v. The State of Rajasthan)**. He has referred to paragraph no. 6 of the judgment in AIR 1969 SUPREME COURT 53 (The State of Bihar v. Kapil Singh). Similarly, in Rameshwar Case (Supra) he has placed reliance on paragraph nos. 11 and 13 of the judgment. He further submits that prosecution case was initiated on the basis of information given by P.W. 6 to P.W. 8 through cell phone, however, neither during investigation the said cell phone was seized nor Call Detail Record was obtained to substantiate as to whether actually P.W. 6 had informed P.W. 8 regarding the occurrence or not. He submits that non -production of the said mobile or C.D.R. creates serious doubt on the prosecution case. Sri Krishna Prasad Singh, learned senior counsel has further argued that prosecution's case is doubtful due to the reason that despite the fact that Puja Kumari (P.W. 6 ) has claimed to be first and only eye witness, Police instead of recording her *fardbyan* had preferred to rely on the *fardbyan* of her Mama, who is P.W. 8. According to Sri Krishna Prasad Singh, learned senior counsel in



a situation where P.W. 6 has only claimed to be eye witness, it was duty on the part of the Police Officer to firstly record the *fardbyan* of the said witness and that *fardbyan* would have been the basis of the F.I.R., but no such step was taken by the Investigating Officer. Sri Krishna Prasad Singh, learned senior counsel has further argued that the whole case is based on the evidence of P.W. 6 (Puja Kumari) who was a child witness. By way of referring to her entire evidence i.e. evidence in her examination- in- chief and cross-examination, Sri Krishna Prasad Singh, learned senior counsel for the appellant tried to persuade the Court that serious contradictions in her evidence suggests that this witness was incapable to disclose truly during trial, and as such, it would not be safe to approve the judgment of conviction on the basis of evidence of P.W. 6. He further submits that even the informant (P.W. 8- Awadhesh Kumar Ashish) has not supported the prosecution case and same thing has been done by the mother of the deceased (P.W. 9) and husband of deceased (P.W. 10). In sum and substance, it has been argued that the learned trial judge has incorrectly passed judgment of conviction and sentence, which is required to be interfered with.

5. Sri Mayanand Jha, learned Additional Public Prosecutor by way of referring to the evidence of P.W. 6 (Puja Kumari) as well as evidence of P.W. 7 ( Murari Kumari Das ) has



argued that evidence of P.W. 6 has been corroborated and supported by her maternal uncle i.e. P.W. 7 ( Murari Kumar Das) who was none else but own brother of deceased as well as own brother of informant. He further submits that taking aid of Section 106 of the Evidence Act since dead body with strangulation mark was found in the premises of the accused persons, particularly the appellant, even in absence of any direct evidence, inference would have been drawn that it was an unnatural death involving the appellant. Besides this, he has argued that evidence of P.W. 6 has further been corroborated by the post -mortem examination report. By way of referring to Exhibit- 1 (post- mortem examination report) he has argued that post -mortem examination report categorically indicates that on the neck of the deceased there was mark and it was a case of death by strangulation.

6. Sri Mayanand Jha, learned Additional Public Prosecutor refuting the submission of Sri Krishna Prasad Singh, learned counsel for the appellant regarding non-placing reliance on evidence of child witness i.e. P.W. 6 , has heavily placed reliance on a recent judgment of the Hon'ble Supreme Court reported in **AIR 2016 SUPREME COURT 5160 (Yogesh Singh v. Mahabeer Singh & Others)**. He has specifically referred to



paragraph nos. 22 and 23 of the said judgment. He, however, submits that even in a case of child witness, if there is apparent illegality or irregularity, his or her evidence can not be ignored in its totality. He submits that in such cases only requirement is to examine the evidence with caution. He submits that on examination of evidence of P.W. 6 it is difficult to raise any doubt on her evidence. He further submits that on the date of occurrence this witness was aged about 12 years and on the date of deposition her age was 14 years. He submits that on examination of her evidence, even in the cross- examination she stood the proper test, and as such, her evidence is completely reliable, which can not be seen with any doubt.

7. Besides hearing learned counsel for the parties, we have minutely examined entire evidences i.e. both oral and documentary evidence. Before proceeding, since the case has moved on the basis of evidence of P.W. 6 (daughter of the deceased ) it would be appropriate to discuss her evidence first.

8. P.W. 6 in her evidence in paragraph no. 1 has stated that occurrence had taken place on 18.09.2008 in the night at 2.00 when she was sleeping in the house with her mother and younger sister- Sonali Kumari. At that very time accused- Sharmila Devi (aunt), Parmeshwar Das (appellant- uncle), grand mother (Jirwa



Devi), sister of her father (Sushila Devi), sister of her aunt (Pramila Devi) all lifted her mother and brought her on veranda. They started assaulting her mother. On the alarm of her mother this witness awoken and she arrived there and tried to save her mother. In the meanwhile, accused -Pramila Devi caught hold of her. Her mother was caught by Sushila Devi, Jirwa Devi and others and they laid her mother there. Her neck was pressed by Sharmila Devi and Parmeshwar Das (appellant) whereupon, her mother died. After that, all the accused persons fled away. This witness further deposed that through her mother's mobile she informed her younger maternal uncle (Mama) Awadhesh Kumar Ashish ( P.W. 8 ). Thereafter, her Mama arrived and she explained everything about the occurrence. Her Mama informed the Laxmipur Police Station. Police arrived and inquired and Police was informed about the occurrence. She further stated that Police at the place of occurrence recorded statement of her Mama. She further stated that prior to this occurrence also the accused persons had quarreled with her mother. She claimed to identify all the accused persons. In paragraph no. 2 of her cross -examination she deposed that her mother was never treated and her mother was not ill. She further denied the suggestion that her mother died due to heart attack, which is evident from paragraph no. 3 of her cross-examination. In



paragraph no. 14 of her cross- examination she further deposed that accused person had caught her mother from the cot. She categorically stated that she could not see at the time while her mother was caught. Her mother was assaulted outside and after hearing her cry she went there. She was assaulted by slaps. She in her cross- examination in paragraph no. 14 further stated that this appellant after slapping had killed her mother by pressing her neck. In paragraph no. 15 of cross-examination she reiterated that before the Police in her statement she had stated that her mother was killed by the appellant by way of pressing her neck. Again in paragraph no. 17 of cross-examination she stated that while neck of her mother was being pressed she was on *varandah*. She had tried to save her mother but she was caught by accused- Pramila Devi. In paragraph no. 19 of the cross- examination she stated that her mother was hale and hearty and also young. She gave vivid picture as to how and under what circumstances her mother was killed. This fact has been stated in paragraph no. 19 of her cross-examination. In paragraph no. 21 of her cross -examination she deposed that mobile no. of her Mama (P.W. 8 ) was saved in the mobile itself. In paragraph no. 23 of cross -examination she further clarified that firstly Darogaji asked from her younger Mama (P.W. 8). Her younger Mama explained everything, which was



informed by this witness and clarified that her Mama had not seen the occurrence. She denied the suggestion in paragraph no. 28 of cross -examination that her mother died due to heart attack.

9. P.W. 7 (Murari Kumar Das) is the brother of the informant and deceased also. In his evidence he has stated that in the night of the occurrence he was in Deoghar where he was informed by Awadhesh Kumar Ashish (P.W. 8) that he was informed by Puja ( P.W. 6) that their sister was killed by the accused persons and he described everything that was explained by P.W. 6 and conveyed to P.W. 8. This witness thereafter reached the village of her sister's house. In his presence inquest report was prepared and on inquest report he put his signature which was marked as Exhibit- 3/1. In paragraph no. 4 of his evidence he has stated that prior to the present occurrence the accused persons were quarreling with her and often she was being ousted from the house. In relation to the said such assault in 2001 information was given to the Police and case was also instituted, however, it ended after compromise. Again this witness deposed that after 2001 and prior to the present occurrence her sister on several occasion was ousted. In paragraph no. 5 of his evidence this witness stated that on 17.09.2008 just one day prior to the occurrence in relation to assault of her sister, his brother had gone to the in-law's house of



her sister, who was Awadhesh Kumar Ashish ( P.W. 8). He further stated that he was the informant of the case. This witness deposed that his brother had informed that earlier some occurrence had taken place in which he had gone to the Police Station, however, after some conversation with his mother and father he returned back. He stated that his brother over telephone had informed his mother and father then his father told that in the morning they would be coming, and thereafter, his brother dropped his sister to her in-law's house and he returned back to his maternal grand mother's house in Nowa Theka Shakal village. Daughter of his sister ( P.W. 6) had given information to his brother, who informed this witness. He identified the appellant in dock. In paragraph no. 8 of cross-examination this witness further reiterated that prior to the present occurrence in his presence also altercation had taken place.

**10.** P.W. 8 (Awadhesh Kumar Ashish) is the brother of the deceased and Mama of P.W. 6. In his evidence he proved his signature on the *fardbyan*, which was marked as Exhibit -2/1. He also proved signature on the inquest report, which was marked as Exhibit- 3/2 and signature on protest petition, which was marked as Exhibit -5. However, after examining entire lower court record Sri Mayanand Jha, learned Additional Public Prosecutor informs that protest petition was marked as Exhibit- 5, but same is not on



record. Before discussing evidence of P.W. 8 it would be necessary to note that after examining lower court record, Sri Mayanand Jha, learned Additional Public Prosecutor has taken us to the compromise petition which was duly signed by this witness P.W. 8 and it was filed on 27.12.2010. Sri Mayanand Jha, learned Additional Public Prosecutor submits that this compromise petition was suggestive of the fact that while evidence was going on this witness had come under the influence of the accused side and this was reason that after filing of compromise petition, which was filed on 27.12.2010 this witness was examined on 03.01.2011 and in his evidence though he deposed that her sister died in her in-law's house and he visited where he found the dead body, he has taken U-turn and started to give certificate as if her sister was not killed by anyone nor she was ever tortured or ousted but the in-law's people were keeping her with respect and dignity. This fact has been stated in paragraph no. 3 of his cross- examination. In paragraph no. 2 of his examination-in-chief he stated that on the basis of doubt and after hearing he had lodged the case. Surprisingly, in paragraph no. 3 of cross- examination in the last line he himself has admitted that compromise has already taken place. It appears that this witness has tried to use the Court proceedings according to his convenience. In such situation, it is



necessary to indicate that such persons must not be spared if such act or misconduct of a witness is noticed in a Court proceeding. However, this issue we will be dealing with subsequently. Firstly, at this juncture, it is required to be examined as to whether the appellant was the actual culprit or not. In the present case the evidence of doctor, who conducted post -mortem examination has got much relevance since some of the witnesses particularly P.W. 8 ( brother of deceased), P.W. 9 (Veena Devi, mother of deceased ) and P.W. 10 (Bhagirath Das, husband of deceased) have taken a different stand. Surprisingly, during trial, learned Public Prosecutor has also not taken any pain to draw attention of those witnesses to their previous statement recorded under Section 161 of the Cr.P.C. At the time of argument, Sri Mayanand Jha, learned Additional Public Prosecutor has also placed their statement which were recorded under Section 161 of the Cr.P.C. Of -course, on the basis of statement recorded under Section 161 of the Cr.P.C. no finding can be recorded regarding guilt, but in the case other evidences are also required to be noticed.

**11.** P.W. 4 ( Dr. Anjani Kumar Sinha ) on 18.9.2008 was posted as Civil Assistant Surgeon in Sub Divisional Hospital at Jamui and on the same day at 4.30 P.M. he conducted post -mortem examination on the dead body of deceased which was



brought by *Chaukidar*. He proved the post- mortem examination report, which was marked as Exhibit -1. In his evidence he has noticed that dead body was having rigor *mortis* fully developed and he noticed the following facts:-

“(1) Injury No. 1 One bruise about 2”x 2” size over front of neck on the right side

(2) Injury No. 2 One bruise about 3 ½” x 2 ½” in size over front of neck on left side

(3) III injury: Face was puffy and cyanosed, eyes prominent and open, conjunctiva congested, lips were blue, bloody foam escaped from angle of mouth, tongue were found swollen.

(2) On further dissection:- there was extravasation of blood into subcutaneous tissue. Under injuries No. (1) & (2) there was laceration of neck muscle and fracture of the corona of the Hyoid bone and superior corne of thyroid cartilage.

(3) larynx and sound trachea were congested and contained frothing mucus. Both lungs were found congested and showed haemorrhage petechiae and exuded dark fluid blood on section. Right side of the heart full of dark fluid blood and left side empty. All the above injuries were antemortem in nature and caused by strangulation. In my opinion cause of death due to asphyxia due to strangulation leading to cardio respiratory failure and death.

Time since death till holding P.M. examination within twelve to 24 hours.”

12. On examination of the evidence of P.W. 4 it is established that there is no reason to doubt that death had occurred due to strangulation and it was not a natural death. Sri Chandra Prakash Jha ( Investigating Officer of the case) was examined as P.W. 5. He is the witness who recorded *fardbyan* and he proved *fardbyan*, which was marked as Exhibit- 2, inquest report marked



as Exhibit- 3 and formal F.I.R., which was marked as Exhibit -4. This witness has deposed that rumor information was received in the Police Station thereafter he recorded Station Diary Entry and proceeded to the village where he reached at about 10.00. On the date of occurrence i.e. 18.09.2008 he recorded *fardbyan* of the informant, re-statement of the informant and thereafter, on the same day he recorded statement of Puja Kumari ( P.W. 6) and other witnesses. This witness inspected the place of occurrence. Place of occurrence has been detailed in paragraph no. 3 of his evidence. Since it was a case of death due to strangulation, certainly there was no reason to notice any apparent such fact at the place of occurrence, but fact remains that occurrence had taken place within the joint premises of deceased as well as accused persons.

**13.** On examination of entire evidences there is no doubt that the mother of P.W. 6 was done to death by strangulation in which besides the appellant other in- law's family members of deceased had also participated. Since Police after investigation had submitted charge -sheet against this appellant and he faced trial and during trial sufficient evidence was brought on record, the learned trial has rightly passed judgment of conviction and sentence. It is true that P.W. 6 at the time of occurrence was aged



about 12 years and at the time of deposition her age was noticed as 14 years and as such, she was a child witness, but on examination of her entire evidence, which includes examination-in-chief and cross-examination, we are of the considered opinion that this witness had stood the test of cross-examination and vividly she explained as to how occurrence had taken place in which this appellant was one of the accused who had pressed the neck of mother of P.W. 6. Moreover, the case is not only based on the evidence of P.W. 6 but fact remains that she was the only eye witness to the occurrence and after the occurrence she immediately on cell phone informed her Mama (P.W. 8), thereafter, he reached the place of occurrence and again she explained every fact to P.W. 8. After arrival of Police P.W. 8 had given vivid picture in the *fardbyan*, which has been marked as Exhibit- 2. In the *fardbyan* categorically he re-produced the facts which were stated by P.W. 6 to him. Of-course during trial P.W. 8 has taken U – turn, but fact remains that reason for taking U –turn was the compromise petition dated: 27.12.2010. Since the compromise petition is already on record, we have also perused the compromise petition. The Court is of the opinion that once the informant in his *fardbyan* had disclosed every fact showing involvement of the appellant and other accused, what was the



reason for him to retract from his earlier version? In the case prosecution has not played a good role, rather inaction has *been* shown by the prosecution, but after noticing entire fact, on such technicality, we are not here to shut our eyes if we are satisfied with the evidence of child witness, who is P.W. 6. Her evidence has also been corroborated in the evidence of Murari Kumar Das ( P.W. 7, brother of the deceased and informant). He has narrated the same thing which was narrated by P.W. 6 (Puja Kumari) to P.W. 8. Besides this, post -mortem examination report (Exhibit -1) is also sufficient to notice that the mother of P.W. 6 was done to death by strangulation. So far submission of learned counsel for the appellant that evidence of child witness is not reliable is concerned, we are of the opinion that of-course he has placed reliance on **AIR 1969 SUPREME COURT 53 (The State of Bihar v. Kapil Singh)** and **AIR 1952 SUPREME COURT 54 (Rameshwar v. The State of Rajasthan)** but none of the judgments categorically states that in case of child witness entire evidence is required to be ignored. Even in Rameshwar Case (Supra ) i.e. **AIR 1952 SUPREME COURT 54 ( Rameshwar v. The State of Rajasthan)** the victim was about 8 years old. Her evidence was initially ignored, however, the High Court had placed reliance on such evidence and that evidence was also



approved by the Hon'ble Supreme Court. In the said case trial judge had recorded that the witness ( child witness) was not in a position to understand about 'oath' even in such case since the evidence of child witness was otherwise reliable, reliance was placed on such evidence. Moreover, there cannot be any straight jacket formula to ignore evidence of child witness. If evidence of child witness is otherwise sufficient to persuade the Court to place reliance, certainly that has to be relied upon. The court is in agreement with the submission of Sri Mayanand Jha, learned Additional Public Prosecutor that of -course evidence of child witness is required to be examined with caution, but if evidence is reliable and corroborated by other evidence, then that has to be relied upon and that cannot be ignored. At this juncture we must indicate that we may not do better than only to reproduce paragraph nos. 22 and 23 of Yogesh Singh Case ( Supra) on which reliance was placed by Sri Mayanand Jha, learned Additional Public Prosecutor, which is as follows:-

“22. It is well –settled that the evidence of a child witness must find adequate corroboration, before it is relied upon as the rule of corroboration is of practical wisdom than of law. (See *Prakash v. State of M.P.*, (1992) 4 SCC 225: ( *AIR* 1993 SC 65); *Baby Kandayanathi v. State of Kerala*, 1993 Supp (3) SCC 667: ( *AIR* 1993 SC 2275); *Raja Ram Yadav v. State of Bihar*, (1996) 9 SCC 287: (*AIR* 1996 SC 1613); *Dattu Ramrao Sakhare v.*



State of Maharashtra, (1997) 5 SCC 341; State of U.P. v. Ashok Dixit & Anr., (2000) 3 SCC 70 : ( *AIR* 2000 SC 1066); Suryanarayana v. State of Karnataka, (2001) 9 SCC 129: ( *AIR* 2001 SC 482)).

23. However, it is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus a child witness is an easy prey to tutoring. [Vide *Panchhi v. State of U.P.*, (1998) 7 SCC 177 : ( *AIR* 1998 SC 2726)].”

**14.** Considering the facts and circumstances particularly evidence of P.W. 6 , P.W. 7 , medical evidence as well as evidence of Investigating Officer, we are of the considered opinion that learned the trial judge has committed no error in passing the judgment of conviction and sentence. Accordingly, the judgment of conviction dated 24.08.2011 and sentence dated 27.08.2011 passed by Sri Nand Lal Prasad, learned Additional Sessions Judge (F.T.C.-1), Jamui in Sessions Trial No. 149 of 2009 (arising out of Laxmipur P.S. Case No. 147 of 2008) is hereby approved and the Appeal stands dismissed.

**15.** Before parting with the judgment, since this Court has noticed serious misconduct on the part of P.W. 8 (Awadhesh Kumar Ashish, own brother of deceased and maternal uncle of P.W. 6 , it would be necessary to direct the learned trial judge to



hold an enquiry under Section 340 of the Cr.P.C. for its logical end.

16. With above observation and direction, the Appeal stands dismissed.

(Rakesh Kumar, J)

( Arvind Srivastava, J)

praful/-

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