

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.793 of 2014

Arising Out of PS. Case No.-647 Year-2010 Thana- JAHANABAD District- Jehanabad

Uma Shankar Singh Son of Diwakar Prasad Singh Resident of village-
Kamla, P.S.- Ujiarpur, District- Samastipur

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anil Kumar Singh, Advocate Mr. Rajiv Ranjan Dwivedi, Advocate Mr. Sanjay Kumar, Advocate
For the Respondent/s	:	Mr. Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE A. M. BADAR)

Date : 04-07-2022

By this appeal, appellant/convicted accused Uma Shankar Singh is challenging the judgment and order dated 26.02.2014 and 03.03.2014 respectively, passed by the learned Adhoc Additional Sessions Judge-I, Jehanabad, in Sessions Trial No.236 of 2012/99 of 2013 thereby convicted him of the offence punishable under Sections 302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life apart from a direction to pay fine of Rs.50,000/- (Fifty thousand). In default of payment of fine he is directed to undergo imprisonment for six months. For the sake of



convenience, the appellant shall be referred to in his original capacity as an accused.

2. Facts in brief leading to the prosecution of the accused, projected from the police report, can be summarized thus:

(A). It is case of the prosecution that the accused had committed twin murder i.e., of Pankaj Kumar and Rubi Devi in their residential house in the night intervening 27.11.2010 and 28.11.2010 by assaulting them by means of a wooden stick and the 'Khanti'- a heavy weapon made of iron used for digging the soil.

(B) It is case of the prosecution that Pankaj Kumar and his wife Rubi Devi (since deceased) used to reside at village East Utta falling under jurisdiction of Police Station- Jehanabad, along with their family members. There family was comprising of mother of Pankaj Kumar, namely, PW 2 Gita Devi, his sisters namely, PW 1 Puja Kumari and PW 3 Soni Devi as well as his brother Chandan Kumar.

(C). It is averred that the accused, who was earlier working as a Police Constable, was having relations with PW 2 Gita Devi – widow of Kallu Ram and, therefore, he used to visit the house of the prosecuting party and used to stay there. On the



day of the incident, he quarrel with PW 2 Gita Devi. Subsequently, Gita Devi had left for Patna. Her another son PW 4 Chandan Kumar was also not present at the house. At the time of the incident, in the night hours, Pankaj Kumar along with his wife Rubi Devi and his sisters were sleeping in their house comprising of two rooms. In the first room of their house they used to do the business of selling eatables and tea. At about 1:00 AM of that night intervening 27.11.2010 and 28.11.2010, the accused entered in their house with a wooden stick in his hand and questioned PW 3 Soni Kumari as to whereabouts of her mother i.e., PW 2 Gita Devi. She informed that Gita Devi had gone to Patna. Thereupon, the accused told her to be ready for suffering beating at his hands. The accused then initially started beating Pankaj Kumar and his wife Rubi Devi who were sleeping in that room by means of wooden stick held by him. He then assaulted them by means of 'iron Khanti'. When he attempted to assault PW 3 Soni Kumari, aged about 13 years, and her sister PW 1 Puja Kumari, aged about seven years, both of them ran away from the backdoor of the house and took shelter in the vicinity. In the morning hours of 28.11.2010, Soni Kumari lodged report of the incident with PW 6 Ranjeet Ray, Police Station Officer, Jehanabad, on the spot of



the occurrence itself and accordingly Crime No.647 of 2010 for the offence punishable under Section 302 of the Indian Penal Code came to be registered with Police Station Jehanabad, against the accused.

(D). The routine investigation is followed. After taking inquest notes, the dead bodies were sent for autopsy and PW 7 Dr. Awinashi Sharan of the Sadar Hospital, Jehanabad, conducted post mortem examination of the dead bodies at Sadar Hospital, Jehanabad, on 28.11.2010 itself. The spot of the incident came to be inspected by PW 6 Ranjeet Rai, the Investigator, and weapon of the offence, i.e., 'Khanti', found on the spot came to be seized by preparing the seizure memo. Statement of witnesses came to be recorded and on completion of routine investigation, the accused came to be charge sheeted for the offence punishable under Section 302 of the Indian Penal Code.

(E). The learned trial Court framed and explained the charge for the offence punishable under Section 302 of the Indian Penal Code to the accused. He pleaded not guilty and claimed trial.

(F). In order to bring home the guilt to the accused, the prosecution has examined as many as 7 witnesses. The



defence has examined two witnesses namely DW 1 Rajeev Nayan and DW 2 Sunil Sharma. The defence of the accused was that of total denial and false implication.

(G). After hearing the parties, the learned trial Court by the impugned judgment and order was pleased to convict the appellant/accused and to sentence him as indicated in the opening para of the judgment.

3. We heard the learned Counsel appearing for the appellant-accused at sufficient length of time. By taking us through the record and proceedings he argued that the prosecution has examined only family members of the deceased, who happens to be sisters, mother and brother of the deceased. No independent evidence is adduced by the prosecution. It is further argued that the first informant PW 3 Soni Kumari was 13 years of age at the time of incident and her sister PW 1 Puja Kumari was barely seven years old at the time of incident. The learned trial Court had not examined the authenticity of their evidence as well as their understanding by putting questions to them. It is further argued that according to the prosecution case, the accused entered in the house by breaking open the door but the Investigator, i.e., PW 5 Ajadi Ram, has deposed that there was no door to the house where the incident took place.



Similarly, it is argued that evidence of PW 3 shows that on the western side of the spot of the incident there is a Police Outpost and as such it is not probable that the incident of twin murder would happen in the vicinity without knowledge of the police.

4. The learned Additional Public Prosecutor opposed the appeal and supported the impugned judgment and order of conviction.

5. We have considered the rival submissions and also perused the record and proceedings including oral as well as documentary evidence relied by the prosecution.

6. As the case in hand is in respect of twin murder occurring in the midnight at the residential house of deceased Pankaj Kumar and Rubi Devi situated at village East Utta, District- Jehanabad, it will have to be seen whether the prosecution has proved that this couple died homicidal death. The factum of death of Pankaj Kumar and Rubi Devi is not seriously disputed by the defence. It is in evidence of PW 1 Puja Kumari- sister, PW 2 Gita Devi- mother, PW 3 Soni Kumari- sister and PW 4 Chandan Kumar- brother of the deceased Pankaj Kumar that in the morning hour they saw dead bodies of Pankaj Kumar and Rubi Devi with bleeding injuries. Evidence of PW 6 Ranjeet Ray, Police Station Officer, Jehanabad, shows



that he prepared inquest notes on dead bodies of Pankaj Kumar and Rubi Devi which are at Exhibits-6 and 7. Inquest report shows that the dead bodies were having injuries. PW 6 Ranjeet Ray, the Investigator, has deposed that the dead bodies were then dispatched for autopsy to the Sadar Hospital, Jehanabad.

7. PW 7 Dr. Awinashi Sharan had conducted post mortem examination on the dead bodies of Pankaj Kumar and Rubi Devi. Unimpeachable evidence of PW 7 Dr. Awinashi Sharan shows that he noticed following injuries on dead body of Rubi Devi:

I. Lacerated wound 6" x 1" over frontal on vertex of scalp and lacerated wound 2" x 1/2" over right side of fore head.

II. Fractured right parietal and frontal bone.

Following are the findings recorded by this Medical Officer, as deposed by him, which were noticed by him upon internal examination of dead body of Rubi Devi:

(a). Head and neck extra dural hematoma on right parietal and frontal region. Brain pale, chest heart empty all chamber. Lungs pale, abdomen, liver, spleen, kidney pale. Stomach filled with digested



food materials, and gases. Bladder partially full,
uterus present and small.

PW 7 Dr. Awinashi Sharan testified that Rubi Devi died due to haemorrhage, shock and head injury as a result of injuries noticed by him, caused by hard and heavy object. He proved post mortem report of dead body of Rubi Devi which is marked as Exhibit-3.

8. PW 7 Dr. Awinashi Sharan, on 28.11.2010 also examined dead body of Pankaj Kumar and found that the said dead body was having lacerated wound of size 4" x 1" on right side of the scalp apart from fracture of right parietal bone.

Upon internal examination of dead body of Pankaj Kumar, PW 7 Dr. Awinashi Sharan noted following internal injuries:

(a). Head commuted fractured of right parietal bone, extra dural hematoma in region of right parietal bone. Brain pale, chest- heart and chamber empty, lungs pale, abdomen, liver, spleen, kidney pale, stomach filled with digested food materials and gases. Bladder partially full.

After conducting post mortem examination of dead body of Pankaj Kumar, PW 7 Dr. Awinashi Sharan opined that the death was due to haemorrhage and shock and head injury as



a result of injuries found on the dead body which were caused by hard and heavy object. This witness had proved report of post mortem examination of dead body of Pankaj Kumar and the same came to be marked as Exhibit-3/A. In cross-examination, PW 7 Dr. Awinashi Sharan has stated that on one of the dead body only one injury was found. He also admitted that such type of injuries can be caused due to fall on hard and blunt surface.

9. It is thus seen from the evidence of PW 7 Dr. Awinashi Sharan as well as contemporaneous documents viz., reports of post mortem examination of dead bodies that apart from external wounds such as fracture of parietal and frontal bones and lacerated wounds, the dead bodies were having extensive internal injuries such as extra parietal dural hematoma and fractured skull. The injuries were on vital part of human body, i.e., head. Therefore, with the aid of this evidence, the prosecution has successfully proved that Pankaj Kumar and his wife Rubi Devi died homicidal death in the night intervening 27.11.2010 and 28.11.2010.

10. Now let us examine whether the accused is proved to be the author of the fatal injuries sustained by deceased Pankaj Kumar and deceased Rubi Devi. Undisputedly, the



prosecution witnesses examined to prove the offence of twin murders are younger sisters of deceased Pankaj Kumar. Both of them as such are close relative of the deceased. Other two witnesses who reached on the spot after the incident in the morning hours of the next day are PW 2 Gita Devi- mother and PW 4 Chandan Kumar- brother of deceased Pankaj. The learned counsel for the appellant assailed the evidence of these prosecution by contending that evidence of close relatives cannot be held to be trustworthy and reliable.

11. Let us, therefore, put on record settled legal position on this aspect. The usual ground urged for discrediting the prosecution witness is that they are related to the victims and are therefore having inimical disposition against the accused persons. Let us, therefore, put on record the law relating to appreciation of evidence of related witnesses and the witnesses having enmity against the accused. In the matter of **Namdeo Vs. State of Maharashtra** reported in **AIR 2007, SC (Supp) 100 (1)**, Supreme Court has held in para 42 thus:-

“42. From the above case-law, it is clear that a close relative cannot be characterised as an ‘interested witness. He is a ‘natural’ witness. His evidence, however, must be scrutinized carefully. If on such scrutiny, his evidence is found to be intrin-



sically reliable, inherently probable and wholly trustworthy, conviction can be based on the 'sole' testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one."

12. In the matter of **Vinay Kumar V/s State of Bihar** reported in **AIR 2008, Supreme Court, 3276**, the Supreme Court after taking review of the law on this aspect has held thus in para 6 on wards:-

"6. Merely because the eye-witnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. We shall also deal with the contention regarding interestedness of the witnesses for furthering prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal



actual culprit and make allegations against an innocent person. Foundation has to be laid if pleas of false implication is made. In such cases the Court has to adopt careful approach and analyse evidence to find out whether it is cogent and credible.

7. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such an enmity against the accused to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism” and the mere fact of relationship far from being a foundation is offer a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observation are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts”.

8. The above decision has been followed in



Guli Chand and Ors. V. State of Rajasthan (1974(3) SCC 698) in which Vadivelu Thevar Vs State of Madras (AIR 1957 SC 614) was also relied upon.

9. *We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. Thus theory was repelled by this Court as early as in Dalip Singh's case (supra) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose J., it was observed*

“ We are unable to agree with the learned Judges of a High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such a observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in - ‘Rameshwar v. State of Rajasthan’.



(AIR 1952 SC 54 at P.59). We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel”.

13. Again in **Masalti and Ors. V. State of U.P., (AIR 1965 SC 202)** this Court observed (Pp 209-210, Para 14):

“But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct”.

14. The over insistence on witnesses having no relation with the victims often results in criminal justice going away. When any incident happens in a dwelling house the most natural witnesses would be the inmates of that house. It is un-pragmatic to ignore such natural witnesses and insist on outsiders who would not have even seen any thing. If the Court has discerned from the evidence or even from the investigation



records that some other Independent person has witnessed any event connecting the incident in question then there is justification for making adverse Comments against non-examination of such person as prosecution witness. Otherwise merely on surmises the Court should not castigate a prosecution for not examining other persons of the locality as prosecution witnesses. Prosecution can be expected examine only those who those who have witnessed the events and not those who have not seen it though the neighbourhood may be replete with other residents also. {See **State of Rajasthan V/s Teja Ram and Ors. (AIR 1999 SC 1776)**}.

15. Similarly, in the matter of **Seeman @ Veer-anam V/s. State represented by Inspector of Police**, reported in **AIR 2005, Supreme Court, 2503**, The Supreme Court has held in para 4 thus :-

4. It is now well settled that the evidence of witness cannot be discarded merely on the ground that he is a related witness or the sole witness, or both, if otherwise the same is found credible. The witness could be a relative but that does not mean to reject his statement in totality. In such a case, it is the paramount duty of the Court to be more careful in the matter of scrutiny of evidence of the interested witness, and if, on such



scrutiny it is found that the evidence on record of such interested sole witness is worth credence, the same would not be discarded merely on the ground that the witness is an interested witness. Caution is to be applied by the court while scrutinizing the evidence of the interested sole witness. The prosecution's non-production of one independent witness who has been named in the FIR by itself cannot be taken to be a circumstance to discredit the evidence of the interested witness and disbelieve the prosecution case. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the court to place credence on the statement. -

With this position of law on record, let us examine evidence of witnesses which, according to the prosecution case are the witnesses who had actually witnessed the incident.

16. PW 3 Soni Kumari, who at the relevant time was about 13 years, is the first informant. She claims to be an eyewitness of the incident, being the resident of the house where the incident of twin murder took place in the midnight. Situation of the spot of the incident is coming on record through evidence of PW 5 Ajadi Ram the then Police Station Officer of



the Police Station Jehanabad who had inspected the spot of the incident soon after the incident. His evidence shows that the first room of the house where the incident took place was having earthen store, cupboard, table etc. where the petty business of selling eatables and tea was being done. The western portion of that room was having a door without shutter and thereafter there is small open place, the northern side of which is another room having door of the ply-board. The incident took place in the second room. PW 5 Ajadi Ram has stated that at the eastern side of the spot of the incident there is a Police Outpost (Naka No.1) as well as the Office of District Education Officer. On this backdrop, it is in evidence of PW 3 Soni Kumari that the incident took place in the midnight between 12:00 PM and 1:00 AM and at that time she was sleeping in her house. As stated by her, her brother Pankaj Kumar and sister-in-law Rubi Devi were also sleeping. She testified that then the accused came and broke open the door. He asked her as to where is her mother. PW 3 Soni Kumari further stated that she informed the accused that her mother had gone to Patna and her another brother has also gone away. As deposed by her, then the accused told her to be ready. Soni Kumari testified that then the accused started hitting on the head of her brother Pankaj by



means of a wooden stick and, thereafter, he assaulted her brother Pankaj by giving blows of 'Khanti' on head. She testified further that with the said 'Khanti', the accused thereafter assaulted her sister-in-law. PW 3 Soni Kumari further deposed that then she and her younger sister Puja ran away from the house from the rear door. She has categorically stated that at the time of incident, the electric light of her house was on. As per her version, in the morning she returned and saw the dead bodies of Pankaj Kumar and her sister-in-law. She stated that she gave information to Police Outpost, i.e., Naka No.1. In chief examination itself PW 3 Soni Kumari has stated that her mother Gita Devi and her brother Chandan Kumar were not present at the house at the time of incident. Her brother Chandan Kumar had gone for approving the proposed bridegroom for marriage. PW 3 Soni Kumari further stated that on receiving information, her mother PW 2 Gita Devi and brother PW 4 Chandan returned to the house.

17. PW 3 Soni Kumari withstood the searching cross-examination conducted by the defence. It is elicited from her cross-examination that in the first room of her house there is a shop and there is another room also for household use. She stated that nearby her house, there is Police Outpost where



police personnel used to remain present. In cross-examination, she affirmed the fact that at the time of the incident, the electric light was burning and further made it clear that their shop used to remain open only up to 7:00 PM. She clarified that nobody used to stay in the said shop. It is brought on record from her cross-examination that the bed in the room was stained with blood but despite showing this fact, the blood stained bed was not seized by the Police Officer.

18. Another eyewitness to the incident in question is PW 1 Puja Kumari, who at the relevant time was about seven years old. She had deposed that the incident took place prior to three years and the time of the incident was at about 1:00 AM of that night. She stated that she was present in the house. At that time, as per her version, the accused came and uttered them to be ready. He then assaulted her brother Pankaj and thereafter to her sister-in-law Rubi Devi by means of 'Khanti'. PW 1 Puja Kumari testified that the accused also attempted to press her neck but she as well as her sister PW 3 Soni Kumari ran away from the house. PW 1 Puja Kumari stated that she concealed herself in the hearth on which they used to prepare tea. As deposed by Puja Kumari, Pankaj Kumar and Rubi Devi died in the incident and her sister Soni Kumari lodged a report of the



incident.

19. PW 1 Puja Kumari was subjected to the lengthy cross-examination in which it is brought on record that at the spot of incident the electric light in the house was burning. She testified that her statement was recorded on the very next day of the incident. She affirmed that she had disclosed the fact of assault by means of 'Khanti' by the accused to her brother Pankaj and her sister-in-law to the police. She admitted that they are having a tea shop in their house which used to function up to 8:00 PM. Except this, other portion of her cross-examination is not relevant.

20. Both PW1 Puja Kumari and her sister PW 3 Soni Kumari had identified the accused while in dock. PW 3 Soni Kumari had proved the FIR lodged by her with promptitude, which is at Exhibit-1/2.

21. The learned counsel for the appellant, as stated earlier has questioned evidence of both these child witnesses by arguing that their competency to depose was not tested by the learned trial Court by asking preliminary questions. PW 3 Soni Kumari, at the time of appearing in the dock was 15 years of age and as such she was competent to take oath and to depose. At the time of incident, she was more than 13 years of age. So far



PW 1 Puja Kumari is concerned, at the time of recording of her statement in the Court she was ten years of age. Principles of appreciation of evidence of child witnesses are laid down by catena of judgment by the Supreme Court. Recently in the matter of **P. Ramesh Vs. State represented by Inspector of Police** reported in (2019) 20 SCC 593 following are the observations of the Hon'ble Supreme Court found in para-16 of the judgment:

“16. In order to determine the competency of a child witness, the Judge has to form her or his opinion. The Judge is at liberty to test the capacity of a child witness and no precise rule can be laid down regarding the degree of intelligence and knowledge which will render the child a competent witness. The competency of a child witness can be ascertained by questioning her/him to find out the capacity to understand the occurrence witnessed and to speak the truth before the court. In criminal proceedings, a person of any age is competent to give evidence if she/he is able to (i) understand questions put as a witness; and (ii) give such answers to the questions that can be understood. A child of tender age can be allowed to



testify if she/he has the intellectual capacity to understand questions and give rational answers thereto. A child becomes incompetent only in case the court considers that the child was unable to understand the questions and answer them in a coherent and comprehensible manner. If the child understands the questions put to her/him and gives rational answers to those questions, it can be taken that she/he is a competent witness to be examined.”

22. Similarly, recently in the matter of **Hari Om @ Hero Vs. State of Uttar Pradesh** reported in **(2021) 4 SCC 345** following are the observations of the Supreme Court found in paragraph-22, the relevant portion of which reads thus:

“22. At the outset, we must note the perspective from which the evidence of a child witness is to be considered. The caution expressed by this Court in Suryanarayana that “corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence” is a well-accepted principle. While applying said principle to the facts



of that case, this Court in Suryanarayana {(2001) 9 SCC 129} observed: (SCC pp. 133-35, paras 5-9)

“5. Admittedly, Bhavya (PW 2), who at the time of occurrence was about four years of age, is the only solitary eyewitness who was rightly not given the oath. The time and place of the occurrence and the attending circumstances of the case suggest no possibility of there being any other person as an eyewitness. The evidence of the child witness cannot be rejected per se, but the court, as a rule of prudence, is required to consider such evidence with close scrutiny and only on being convinced about the quality of the statements and its reliability, base conviction by accepting the statement of the child witness. The evidence of PW 2 cannot be discarded only on the ground of her being of tender age. The fact of



PW 2 being a child witness would require the court to scrutinise her evidence with care and caution. If she is shown to have stood the test of cross-examination and there is no infirmity in her evidence, the prosecution can rightly claim a conviction based upon her testimony alone. Corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. Some discrepancies in the statement of a child witness cannot be made the basis for discarding the testimony. Discrepancies in the deposition, if not a material particulars, would lend credence to the testimony of a child witness who, under the normal circumstances, would like to mix-up what the witness saw with what he or she is likely to imagine to have seen. While appreciating the evidence of the child witness, the courts are required to rule out the possibility of the child



being tutored. In the absence of any allegation regarding tutoring or using the child witness for ulterior purposes of the prosecution, the courts have no option but to rely upon the confidence inspiring testimony of such witness for the purposes of holding the accused guilty or not.

*6. This Court in **Panchhi v. State of U.P.** held that the evidence of the 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 an easy prey to tutoring. The evidence of the child witness must find adequate corroboration before it is relied upon, as the rule of corroboration is of practical wisdom than of law (vide *Prakash v. State of M.P.*; *Baby Kandayanathil v. State of Kerala*; *Raja Ram Yadav v. State of Bihar* and *Dattu Ramrao Sakhare v.**



State of Maharashtra).

*7. To the same effect is the judgment in
State of U.P. Ashok Dixit.....{(2000) 3
SCC 70}.”*

23. In **State of U.P. v. Krishna Master {(2010) 12
SCC 324}**, the Supreme Court has observed thus in paragraphs
36 and 37:

*“36. ... This Court fails to understand as to
on what principle and on which experience
in real life, the High Court made a sweep-
ing observation that it is inconceivable that
a child of Madan Lal’s understanding
would be able to recapitulate facts in his
memory witnessed by him long ago. There
is no principle of law known to this Court
that it is inconceivable that a child of
tender age would not be able to recapitu-
late facts in his memory witnessed by him
long ago. This witness has claimed on oath
before the Court that he had seen five
members of his family being ruthlessly
killed by the respondents by firing gunshots.
When a child of tender age witnesses
gruesome murder of his father, mother,
brothers, etc. he is not likely to forget the
incident for his whole life and would
certainly recapitulate facts in his memory*



when asked about the same at any point of time, notwithstanding the gap of about ten years between the incident and recording of his evidence.

37. This Court is of the firm opinion that it would be doing injustice to a child witness possessing a sharp memory to say that it is inconceivable for him to recapitulate facts in his memory witnessed by him long ago. A child of tender age is always receptive to abnormal events which take place in his life and would never forget those events for the rest of his life. The child would be able to recapitulate correctly and exactly when asked about the same in future. Therefore, the specious ground on which the reliable testimony of PW 2 Madan Lal came to be disbelieved can hardly be affirmed by this Court.”

24. It needs to mention here that competency of the child witness depends on his capacity and intelligence. His understanding of difference between truth and falsehood as well as duty to tell the truth affirms his competency to depose. The decision on the competency of the child witness to testify primarily rests on the decision of the trial Court who has an opportunity to see the child witness, to notice



his manner and appearance before the Court as well as his way of answering the questions put to him by the parties. In the case in hand, we have noted that PW 1 Puja Kumari and PW 3 Soni Kumari have answered the questions put to them by the prosecutors as well as the defence in very clear and cogent manner. We are unable to notice any confusion in the mind of these child witnesses while answering the questions put to them by both the parties. While in the dock, both these natural witnesses to the incident had exhibited intellectual capacity to understand each and every questions put to them by both the parties. Both of them have given rational answers to those questions. As both these witnesses, as seen from their depositions have shown their understanding about the question put to them by the prosecution and the defence, it has to be accepted that they are competent witnesses. It is not pointed out to this court as to which portion of evidence of these witnesses shows that they had no capacity to understand the questions put to them by the parties. Hence, without laying down any foundation in that regard, such argument fails to impress us. In such situation, only because the trial Court had not asked some preliminary questions to these witnesses their otherwise truthful, clear and cogent evidence cannot be jettisoned. There is nothing in



cross-examination of both these witnesses to suggest that these witnesses are tutored witnesses and therefore they are deposing a lie against the accused. Their evidence is conspicuously silent as to motive if any with them to falsely implicate the accused in the horrid murder of their brother and their sister-in-law. Capacity of both these witnesses to remember and recapitulate the facts is not disputed or questioned during their cross-examination by the defence. These two close relatives of the deceased were natural witnesses to the incident which took place inside their dwelling house in the midnight. Upon seeing brutal assault on their brother and sister-in-law, both these witnesses ran away to save their life. As seen from the materials elicited from their cross-examination, they had every opportunity to see the known assailant in the light of the electric bulb which was emitting light in the room. The gruesome incident which they witnessed, as such, must be imprinted in their memory so as to enable them to reiterate the same before the trial Court during the course of their evidence. We have already noted that in the matter of **Krishna Master** (Supra), the Supreme Court has observed that a child of tender age is always receptive to abnormal event which take place in his life and would never forget



such event for rest of his life. In the case in hand, the event was that of horrid murder of their close relative and, as such, in absence of anything in their cross-examination to doubt their version, we are unable to doubt version of both these eyewitnesses to the incident. Suffice it to state that we have found evidence of both these eyewitnesses trustworthy and reliable. Their evidence is free from infirmity or discrepancy and as such deserves to be accepted.

25. The evidence of PW 1 Puja Kumari and PW 3 Soni Kumari is gaining full corroboration from version of PW 6 Ranjeet Ray, the Investigator, who had found weapon of the occurrence, i.e., 'Khanti', on the spot of incident. He had seized the same by preparing seizure memo which is proved by him during the course of his evidence. Similarly, evidence of these witnesses is also gaining corroboration from the independent source, i.e., from evidence of PW 7 Dr. Awinashi Sharan. Dead bodies of Pankaj Kumar and Rubi Devi were found to be having external as well as internal injuries attributable to a hard and heavy object. 'Khanti' which is made of an iron bar is undoubtedly a hard and heavy object.

26. PW 2 Gita Devi is mother of deceased Pankaj. She is not an eyewitness to the subject crime. Her evidence



makes it clear that at the time of the incident she was not present at the house. Similarly, the evidence of PW 4 Chandan Kumar-brother of deceased Pankaj, also makes it clear that he was not present at the house in the night hours when the incident took place.

27. Police Outpost is in fact in the vicinity of the spot of the incident. It is a proved fact that the twin murders had been committed in the house of PW 1 Puja Kumari and PW 3 Soni Kumari leading to the death of their brother and sister-in-law. Hence, we see no merit in the submission of the learned counsel for the appellant that such incident is not probable only because Police Outpost is located in the vicinity. Ultimately, two adult persons died homicidal death in the vicinity of the Police Outpost is an established fact from the evidence on record and unfortunately it seems that the occupant of that outpost might have been in the deep slumber at that dark midnight.

28. PW 3 Soni Kumari has deposed that the accused entered in their house by breaking open the door. Evidence of PW 5 Ajadi Ram is to the effect that front room of the house where the incident took place was not having the shutters to one of the two doors but his evidence makes it clear that the another room of the house was having a door made of the ply-wood. The



front room, as seen from the material elicited from cross-examination of the prosecution witnesses, was being used for selling eatables. The incident took place in the other room of the house which was having the door. PW 3 Soni Kumari's evidence as such can at the most demonstrate that by opening the shutters of that door forcefully the accused entered in the room where incident took place. This facts, as such, cannot cast a shadow of doubt on the prosecution case.

29. DW 2 Sunil Sharma has deposed that at the time of incident, the accused was not present on the spot of the incident. DW 1 Rajeev Nayan has deposed that on 28.11.2010 the accused was going to Ranchi in the morning hours. At this juncture it has to be noted that the incident took place in the night intervening 27.11.2010 and 28.11.2010. In order to probablize the plea of alibi, it has to be shown that it is physically impossible to infer presence of the accused at the scene of the occurrence at the time of the incident. Evidence of the defence witnesses is not making out such probability. Even if it is assumed that the accused was going to Ranchi in the morning hours of 28.11.2010, it cannot be said that it was physically impossible for him to commit the crime at 1:00 AM of 28.11.2010 at the place of occurrence. These defence witnesses



have not given any particulars regarding presence of the accused at a particular spot and the distance of that spot from the place of the incident. Hence, version of defence witnesses is not sufficient to doubt the otherwise truthful prosecution case. The same was rightly rejected by the learned trial Court.

30. For the above stated reason, we are full in agreement with the finding arrived at by the learned trial Court. The prosecution has undoubtedly proved commission of the offence punishable under Section 302 of the Indian Penal Code by the accused by causing murder of Pankaj Kumar and Rubi Devi by assaulting them on vital parts of body with a deadly weapon with the intention to kill them.

31. In the result, the appeal is devoid of merit and the same is dismissed.

(A. M. Badar, J)

(Rajesh Kumar Verma, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	04.07.2022
Transmission Date	04.07.2022

