

IN THE HIGH COURT AT CALCUTTA
Criminal Appeal
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 296 of 2020

Subhas Ruidas

Versus

The State of West Bengal

For the appellant : Mr. Prithvijoy Das, Adv.
: Mr. Jaydeb Das, Adv.
: Mr. Subhasis Ghosal, Adv.
: Ms. Ishani Ghosal, Adv.
: Mr. Raj Barman, Adv.
: Ms. Promila Halder, Adv.

For the State : Mr. Swasata Gopal Mukherjee, Id. PP
: Mr. Faria Hossain, Adv.
: Mr. Anand Keshari, Adv.

Heard on : September 09, 2022

Judgement on : September 16, 2022

Md. Shabbar Rashidi, J.:

1. The instant appeal is directed against the judgment and order of conviction dated 26.02.2020 and 27.02.2020 passed by the learned Additional District and Sessions Judge Bolpur, Birbhum in Sessions Trial No. 05(June) 2017 arising out of Sessions Case No. 56 of 2017, convicting the appellant for the offences punishable under section 302/448 of the Indian Penal Code.

2. On 10.06.2016 at about 08:45 Hrs. one Katu Ruidas lodged a written complaint in Illambajar P.S. stating, inter alia, that his daughter Smt. Anna Ruidas was married to one Kajol Ruidas of village Tarapur under P.S. Illambazar sometimes in the year 2002. It was also stated in the written complaint that her neighbour Subhas Ruidas and his family members used to tease his daughter since long and used to keep a bad eye upon her. On 09.06.2016 at about 1 a.m. when there was no one in the house, the said Subhas Ruidas with his family members entered into the house of Anna Ruidas being armed with lathi, rod etc. and killed her. The written complaint also narrates

that in the following morning when the family members of Anna Ruidas returned back, the accused persons threatened and attacked them with lathi, rod etc. It is further stated that her daughter Anna Ruidas was killed in presence of her younger son Surya Ruidas who was then seven years old. The aforesaid complaint also named as many as 11 persons as the culprits.

3. On the basis of such written complaint, Ilambazar P.S. Case No. 94 dated 10.06.2016, was started against 11 accused persons including the present appellant.

4. The police took up investigation and on completion of investigation submitted charge-sheet under Section 448/302/120B against six accused persons. Accordingly, upon appearance of the accused persons and after compliance of the provision under Section 207 of the Code of Criminal Procedure, the accused was committed to the Court of Session for trial.

5. In consideration of the materials in the CD, charges under Section 448/302/120B IPC were framed against the six accused persons.

6. In course of trial, the prosecution examined as many as nine witnesses in all. Upon consideration of the testimony of the witnesses examined on behalf of the prosecution and also upon examining the accused persons under Section 313 of the Code of Criminal Procedure, five accused persons were acquitted under Section 335(1) of the Code of Criminal Procedure, whereas, the accused Subhasis Ruidas, i.e. the present appellant, was convicted for the offences punishable under Section 448/302 of the Indian Penal Code by the impugned judgment.

7. The appellant seeks to assail the impugned judgment and order of sentence on the ground that the same is based on conjectures and surmises and that the necessary ingredients of the offence have not been established on the basis of the evidence adduced on behalf of the prosecution and as such the impugned order is liable to be set aside. It has also been stated on behalf of the appellants that learned Court below erred in holding the appellant guilty on the basis of sole testimony of a child witness. The impugned judgment is also sought to be assailed on the ground that the prosecution has failed to produce vital witness which would be giving rise to an adverse

interference against the prosecution case. It has also been set up that the testimony of the prosecution witnesses are inconsistent and contradictory and order of conviction on the basis of such evidence, is not sustainable.

8. So far as the present factual backdrop of the case, it is the story line put forward by the prosecution that in the night of 09/10th June 2016, the appellant, along with other family members, entered into the house of the victim Anna Ruidas at about 01.00 a.m. being armed with lathi, rod, pillow etc. and killed Anna Ruidas in presence of her two minor sons. At that time, there was no one in the house, the husband of the victim had gone to another village to meet his relatives.

9. From the story set up by the prosecution, it is quite evident that one Anna Ruidas suffered death in the night of 9/10 June, 2016 at 1.00 a.m. in her house and such death was anything but a natural death. It further transpires from the prosecution story that the aforesaid death was caused by the appellant and the other accused persons when they attacked the house of the victim at about 1.00 a.m. in the night being armed with lathi, iron rod, pillow etc. The appellant and

others also perpetrated the overtact which, ultimately resulted in the death of the victim Anna Ruidas.

10. According to the story set out by the prosecution, the entire incident leading to the death of Anna Ruidas took place in presence of her two sons, one of whom is said to be a mentally retarded person. In fact, from the evidence adduced on behalf of the prosecution, it transpires that all the witnesses to the incident have owed their knowledge about the incident from the son of the victim namely Surya Ruidas. The said Surya Das has been examined as PW3.

11. Admittedly, the said witness (PW3) was of very tender age of 7/8 years at the relevant time. The possibilities of tutoring and doctoring of such a witness cannot be ruled out, altogether. But at the same time, the testimony of such witness cannot be discarded, straightaway, only on account of his tender age or possibility of easy prey of tutoring.

12. From the evidence of PW3, it transpires that the learned Court, before examining him, put certain questions in order to ascertain if the witness, who was then 9 years of age, was able to understand the questions put to him and was

capable of giving rational answers to such questions. Being satisfied, the learned Court proceeded to record his testimony.

13. In his deposition, PW3 has stated that on the date of incident at about 1 a.m. in the night, the present appellant Subhas Ruidas along with the other accused persons Mamata, Haru and Rakhahari, came to his house of the PW3 and knocked the door. His mother opened the door and the witness could see that the appellant Subhas Ruidas was there. Thereafter, Subhas caught hold of the victim by her neck tightly, as a result of which, she went senseless. Wife of Subhas poured some water on her face. The witness has further stated that the accused persons took his mother outside the room and accused Subhas assaulted and murdered his mother by a crowbar (sabal). The witness has also stated that his mother was also assaulted by the accused persons on her chest, forehead and back and that he witnessed the entire episode while the other accused persons also witnessed the occurrence standing over the place of occurrence. It also transpires from the evidence of PW3 that at the relevant point of time, only PW3 and his mentally challenged brother were present along with their victim mother which appears to be

quite natural. The presence of the witness at the scene of occurrence has also not been challenged by the defence during the trial.

14. The testimony of PW3 has been questioned on the ground of his tender age and inconsistency or contradictions with his statement recorded under section 164 of the Code of Criminal Procedure and also on the ground that testimony of PW3 does not find corroboration from the medical evidence. In this respect, learned Advocate for the Appellant has relied upon a decision of **MADHUMOY MADHUSUDAM BOUL Vs STATE of WEST BENGAL** reported in **1992 Supreme Court Cases (Cri) 909**. In paragraph 5 of the said decision it was observed by the Hon'ble Supreme Court that,

**5. "With this background.....
Further his version is in conflict with the medical evidence. In the chief examination he stated that the accused in the first instance throttled his wife to death. He stated that the accused after throttling the deceased to death ran the truck over her body. This version appears to be highly artificial. That apart his conduct is highly unnatural. If he had really seen the incident in the manner stated by him, he kept silent for two months, did not inform anybody and what more he states is that he went on his own to the police station and gave a statement. It was simply mentioned that some unknown person has caused the death. PW 18's**

evidence no doubt has been relied upon by both the courts below. But there are infirmities in his evidence. First of all it is highly doubtful whether he was in the truck on that night. If he was in the truck he must have also received some injuries when it met with an accident and what is more a labourer was also killed. The other infirmity is that he did not inform anybody and he said for two months he never bothered about this thing and he was simply remaining in his house. This is highly unnatural and suspicious. He must have been put up as a witness at a belated stage. Further his version that the accused first throttled her to death is proved to be false as per the medical evidence.”

15. On the other hand learned counsel for the state submits that the conviction of the appellant through the impugned judgment is well founded on the basis of convincing evidence led on behalf of the prosecution beyond any iota of reasonable doubt. It has been submitted that the law recognizes a child to be a competent witness but rule of prudence demands the testimony of child witness to be adequately corroborated and taken into consideration only after careful evaluation as a child can be easy prey of tutoring. Learned counsel for the State has cited the case of **Bhagwan Singh Vs. State of M.P. reported in (2003) 3 SCC 21**. It was observed in the said case that,

“19. The law recognises the child as a competent witness but a child particularly at such a tender age of six years, who is unable to form a proper opinion about the nature of the incident because of immaturity of understanding, is not considered by the court to be a witness whose sole testimony can be relied upon without other corroborative evidence. The evidence of a child is required to be evaluated carefully because he is an easy prey to tutoring. Therefore, always the court looks for adequate corroboration from other evidence to his testimony. ”

16. The State’s Counsel also refuted the argument that conviction cannot be based on the basis of sole testimony of a child witness.

17. In the case at hand, however, circumstances are altogether different. There is no question regarding the presence of PW3 at the scene of occurrence which occasioned his witnessing the occurrence. The said witness has stated, in unequivocal terms that the Appellant Subhas Ruidas assaulted and committed murder of his mother and he witnessed the entire episode with his own eyes. All other witnesses including his father (PW5), grandmother (PW2) uncle (PW4) have testified that they came to know of the occurrence from PW3. Moreover, the accounts of the occurrence given by the said witnesses are similar consistent and in conformity with that of PW3, all implicating the Appellant in unambiguous terms. The post

incident conduct of PW3 seems to be placed in a more natural and usual position vis-à-vis that in the case relied by the Appellant. As such, the ratio laid down in the aforesaid decision may not come to any help to the Appellant.

18. Section 118 of the Indian Evidence Act, does not make any difference with regard to the testimony of a child witness or render it unbelievable provided the child is able to understand the questions put to him/her and give rational answers.

19. The father of PW3 was not at home on the fateful night. He came back in the following morning being informed over phone about the occurrence.

20. PW3 also stated to have recorded his statement regarding the incident before the Learned Magistrate within a few days and that he narrated the incident to his father and grand-mother on their arrival. In his cross-examination also, PW3, appears to have withstood his statements made in his examination-in-chief. In his cross examination, he was asked about his narration of the incident to his grand-mother and he admitted to have narrated the incident to her in the following morning. Subsequently, police visited his house. The cross-examination of the PW3 goes to show that the witness was not

confronted with any question regarding the manner and means of assault in his cross-examination, resulting in the death of his mother. He was suggested during cross-examination that he stated before the Magistrate that the appellant Subhas Ruidas pressed the face of his mother and gagged her mouth with a Gamcha which the witness admitted.

21. On behalf of the appellant, our attention is drawn to the fact that PW3 stated in his statement under section 164 of the Criminal Procedure Code stated that while the appellant pressed the mouth of his mother and gagged it by a loin cloth, he was asked by the victim to go to sleep. Such statement has been said to be unnatural and practically impossible that the victim having seen the imminent danger of her death would asked her son to go to sleep.

22. The bottom line of the prosecution story is that the appellant and others attacked the house of the victim in the night, assaulted and committed her murder by strangulation and gagging. In surfeit of judgments, the Hon'ble Supreme Court and different High Courts have held that minor contradictions inconsistencies do not necessarily demolish the

entire prosecution story if it is otherwise found to be creditworthy.

23. It is also to be taken into consideration that only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person. It is also settled principle now that while a trial court is appreciating the evidence; the court has to take into consideration whether the contradictions or omissions are of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the hinge of the prosecution case cannot be a ground to reject the evidence in its entirety. The trial court, after going through the

entire evidence, must form an opinion about the credibility of the witnesses.

24. In the instant case, as we have observed that PW3 has, narrated the incident with ample clarity and without any sort of ambiguity. We have also found from the evidence that the testimony of PW3 obtains corroboration from the medical witness PW7 together with the medical evidence Ext. 5 and also from other witnesses examined on behalf of the prosecution. The narration set out by PW3 is also supported by PW2. She has stated that she came to know about the occurrence from her grandson (PW3). She has stated in her deposition that being informed, she went to the matrimonial house of her daughter, the victim, and found marks of injury on her head chest etc. She has also testified that her son-in-law was not in the house in the night of incident. She has also stated that her daughter had called her in the night prior to the incident and informed having a quarrel with the accused Subhas when he threatened the victim to kill.

25. PW2 has also stated that her son in law informed her over phone and she proceeded towards the house of his

daughter at about 6.00 AM. She also stated that she set out for her daughter's house just after 6.00 AM. Reaching there she found her daughter lying dead inside her house. In her cross examination, PW2 appears to have stood by her statement in the examination-in-chief.

26. P.W.4 is the brother in law of the victim. He has stated that he came to know from Surya Ruidas, his nephew, that all the accused persons at about 1.00 AM in the night intruded the room of Anna. Subhas dragged his sister in law holding by her hairs and assaulted her. He has stated that police conducted inquest over the dead body of his sister in law in his presence and he signed on the inquest report. This witness has also stated that the accused persons picked up quarrel with his sister in law in absence of his elder brother. Later, in the evening the accused persons quarrelled with his sister in law and threatened her. In his cross examination, PW4 has stated that police came to house of Kajal (PW5) at 08.30 on that day. Nothing fruitful could be hauled out from this witness in his cross examination which can cast doubt on the veracity of prosecution case. He has been able to testify the absence of his brother on the fateful night and that

police visited the house of the victim and conducted inquest on her dead body.

27. PW5, in his deposition, has stated that he left for his relative's house at Hatempur at about 3.30/4.00 p.m. which is at 10 minutes driving distance. Such statement of PW5 is in consonance with that of PW4 who also stated that his brother left the village at 3.00 pm after finishing his work. He has further stated that he returned his house upon information of the incident given by his brother over phone and when he came back police was present. He has also stated that the incident was narrated to him by his son Surya. The cross examination of PW5 also does not seem to yield anything to the defense which can be taken as demolishing the prosecution story.

28. PW6 is the brother's wife of PW5. She, in her deposition, has testified that her bhasur, Kajal Ruidas was not present in the night of incident. She has stated that she came to know about the occurrence from Surya Ruidas son of Kajal. She has also stated that on the date of incident, victim Anna Ruidas had quarrels with Subhash, the appellant.

29. PW8 is one of the Investigating Officers in the case. He appears to have arrested one accused and recorded the

statements of two witnesses under section 161 of the Code of Criminal Procedure. There appears to be no cross examination of this witness on any material point.

30. PW9 is another Investigating Officers in the case. He has proved the inquest report (Ext. 3/1), dead body challan (Ext. 8) and seizure list (Ext.9) also prepared by him. In course of investigation, he stated to have recorded statements of the available witnesses and arrested one accused. He also stated to have applied for police remand of the accused Subhas Ruidas which was allowed and during such police remand the offending weapon was recovered from the house of the accused. This witness also recorded confessional statement made by accused Subhas Ruidas and produced the PW3 before Learned Magistrate for recording his statement under section 164 of the Criminal Procedure Code. He also made prayer for issuance of Warrant of Arrest against some of the accused persons and finally, submitted Charge Sheet in the case. During cross examination, this witness stated that he visited the place of occurrence on 10.06.16 at about 10/11 am, met Kajal Ruidas and recorded his statement as well as that of the other witnesses.

31. During cross-examination PW9 has stated that being endorsed with the investigation; he visited the place of occurrence at about 10/11 a.m. on 10.06.2016. He further stated that he met Kajol Ruidas (PW5) and recorded his statement as well as that of other witnesses under section 161 of Criminal Procedure Code. The defence cross-examined PW9 but from his cross-examination nothing appears to have been pulled out which could have an effect of belying the prosecution story.

32. PW1 is the scribe of the written complaint. He has not deposed anything material to the prosecution case. He has just proved the written complaint written in his pen under the instruction from his aunt (PW2).

33. As far as the medical evidence is concerned, the autopsy surgeon found: (i) two parallel transversely placed ligature marks measuring 12 ½ inch, the ½ inch placed low down around the neck, placed 2" above supra sterna notch in front and 5" below ext. Occipital protuberance on the back, 3" below angle of mandible, 3 ½ inch below the tip of mastoid process. (ii) Multiple bruise present on both breasts. (iii) fracture at mid part of body of thyroid cartilage with extravasations of blood. The post-mortem report (exhibit 5) goes to show that the Dr. Opined that

death was due to the effect of strangulation by ligature which was ante-mortem in nature. The nature of injuries and cause of death opined by the doctor seems to be in quite conformity with the story of the incident narrated by the eye witness PW3. PW3 has stated that the appellant /accused caught hold of her mother by neck forcefully resulting into her death. Exhibit 5 also suggests that the death was caused due to strangulation. It was also stated by PW3 that his mother was assaulted by the accused persons. The post-mortem report exhibits multiple bruises and fracture of thyroid cartilage. The injuries found on the person of the victim goes to support the story narrate by PW3 and seems to be quite in consonance with the oral account narrated by PW3 and relied by learned trial court in recording the conviction of the appellant. The injuries so recorded also appear to be sufficient to cause death.

34. The appellant has sought to assail his conviction recorded in S.T. No 05 (June) 2017 on the ground that there are contradictions in the narration of PW3, the only eye witness. It has further been stated that PW3 happens to be a minor of 7/8 years of age and is vulnerable to tutoring; his testimony cannot be believed unless it is corroborated by

medical and other evidences. In this regard, learned Advocate for the appellant has pointed out that the post-mortem report (exhibit 5) together with the testimony of PW7 (autopsy surgeon) indicates that the cause of death is strangulation with ligature, together with multiple marks of bruise on both of the breasts which according to the appellant, is against the story of the prosecution that the victim was beaten by a crowbar (sabal) on her forehead, chest and back. PW3 has stated in his examination that his mother was assaulted and killed by Subhas Ruidas with a crowbar. In a separate sentence, it has been stated that his mother was assaulted on her chest, forehead and back. Such statement has been in separate sentences where the assault on the chest, forehead and back, is not qualified with any weapon. The allegation of assault and murder by a crowbar is distinctly attributed to the appellant in separate sentences. Both the statements cannot be taken together to infer that the victim was assaulted by the appellant on her chest, back and forehead with the crowbar resulting in her death. The appellant has sought to blend together the two statements to establish a contradiction. Be that as it may, the prosecution story to the effect that the appellant and others

entered into the house of victim in the night and perpetrated an assault with crowbar, lathi, pillow etc. does not seem to be shaken for the minor contradictions.

35. We do consider that while appreciating evidence, one is required to consider the entire evidence as a whole with the other evidence on record. Mere one sentence here or there and that too, to the question asked by the defence in the cross-examination cannot be considered stand alone. Even otherwise it is to be noted that what is stated by the doctor/medical officer can at the most be said to be his opinion. He is not the eyewitness to the incident.

36. The learned Advocate for the appellant has also raised a plea that there was an inordinate delay in lodging the first information report, giving rise to a reasonable suspicion regarding the veracity of prosecution case and possibility of an afterthought. In this regard, learned Advocate for the appellant has relied upon the case of **Thulia Kali Vs. State of Tamil Nadu**, reported in **1972 SCC (3) 393**.

37. In the aforesaid case, the Hon'ble Supreme Court has been pleased to observe that it is essential that delay in lodging

the FIR should be satisfactorily explained in order to avoid embellishment which is creature of afterthought.

38. The appellant has also relied upon a case reported in **(2008) 17 SCC 249 Om Prakash Vs. State of Uttar Pradesh.**

In the said case, the First Information Report was scribed by someone from a distant village and at a time when his arrival at the place of occurrence was doubtful due to distant location of his residence. The scribe was also not examined by the prosecution. The Hon'ble Supreme Court also observed that there existed a discrepancy as regards the timing of lodging of First Information Report. However, in the instant case, the circumstances are altogether different from that relied by the appellant.

39. According to the prosecution case the occurrence is said to have taken place at about 1.00 a.m. in the night and the matter was reported to the police in the following morning. PW5, the husband of the victim has stated in his deposition that he was not at home on the night of incident. He received a phone call regarding the occurrence from his brother and returned to his house at about 6.00/6.30 in the morning and came to know about the incident from his son Surya (PW3).

PW4 the brother of PW5 has testified that he informed the incident to his brother over mobile phone. PW2 the mother of the victim has also stated that being informed over phone, she came to the house of her daughter at about 6.00 in the morning. Thereafter she lodged the written complaint with Illambazar Police Station.

40. From the perusal of Formal First Information Report (Ext. 6), written complaint (Ext. 1) together with the testimony of witnesses, it appears that the occurrence is said to have taken place in the night of 10.06.2016 at about 1.00 Hrs. and the information was received by Illambazar police station at 08.45 Hrs on 10.06.2016. Following this, Illambazar PS UD case No. 08/2016 corresponding to Illambazar Police Station case No. 94/2016 was started over such report.

41. Learned counsel for the appellant has attributed the alleged delay in lodging the First Information Report in reference to a statement made by the doctor (PW.7) in her cross examination where it has been stated that the time of death could not be specified in the post mortem report as autopsy on the dead body of the victim Anna Ruidas was conducted at a belated stage. Such statement, however, does not seem to be

based on any specific note in this regard, in the post mortem report.

42. On the contrary, according to the story set out by the prosecution, the occurrence took place at about 1.00 a.m. in the night of 9/10 June, 2016 when no elderly person was at the house. The matter was reported to the husband and mother of the victim in the night of incident itself or in early hours of 10.06.2016. They could arrive at the place of occurrence in the early hours of the following morning i.e 10.06.2016. Police was instantly informed on the arrival of PW2 and PW5. Immediately thereafter, the police came there and inquest was conducted. The inquest report (Ext.3/1) shows that inquest on the dead body of the victim was conducted between 9.15 hrs and 9.45 hrs on 10.06.2016. The inquest report also discloses that the occurrence took place in the night of 9/10.06.2016. Such an inference is further fortified by the statement of PW4. He has stated that on 09.06.2016 his brother (PW5) was not present at his house; his sister-in-law (victim) was at her house with her two minor sons when in the evening the accused persons pounded her house and had a quarrel. Later the accused persons attacked the house of Anna

Ruidas and committed her murder. He has further stated in his cross-examination that his brother kajal (PW5) left home on the date of incident at about 3.00 p.m. informing him about his departure. PW4 also stated that police came to the house of his brother at 8.30 hrs and that he was interrogated by police on 10.06.2016. This witness also happens to be an inquest witness.

43. In view of the aforesaid facts, there appears to be, practically, no delay whatsoever, in lodging the First Information Report. The First Information Report appears to have been lodge promptly, well within the time the circumstances naturally demanded. This also demolishes the theory of any possibility of an afterthought, manipulation or tutoring in the lodging of First Information Report.

44. Another point that has been raised on behalf of the appellant, that there are contradictions in the testimony of PW3 with reference to the place of occurrence. It has been pointed out that according to the statement of PW3, his mother was assaulted by the accused persons inside the room, thereafter, she was dragged outside where she was again beaten and killed. The appellant has tried to assert that there are

contradictions in the statement with regard to the actual place where the victim was killed which renders the entire prosecution case doubtful. However, in spite of such contradictions, the storyline that the accused persons attacked the house of the victim in the midnight assaulted the victim resulting in her death remains intact. We have already discussed hereinbefore and came to a conclusion that minor contradictions or inconsistencies do not necessarily demolish the entire prosecution story if it is otherwise found to be creditworthy. Moreover, the witness (PW3) was then a tender child aged about 7/8 years only, witnessing an assault perpetrated on her mother in the late night, was also threatened and frightened with no help at hand, such contradictions in his statement are not very unnatural. The magnitude of such contradictions cannot be taken to vitiate the veracity of entire prosecution case.

45. Admittedly, other witnesses, besides PW2 and PW5, have derived their knowledge of the occurrence from PW3. It has been pointed out that PW3 has admitted narrating the occurrence to PW2 and PW5. This by itself cannot belie that since the occurrence was reported to PW2 and PW5 only, other

witnesses could not have known about it. Other witnesses are also the relatives of the victim and they could well acquire knowledge of the occurrence, might be by overhearing when it was being narrated to PW2 and PW5 or otherwise, which is very natural in the circumstances of the case. This cannot be magnified to destroy the prosecution story. In any case, the conviction of the appellant through the impugned judgement seems to be primarily based on the testimony of PW3 supported by medical evidence.

46. It is further contention of the appellant that the prosecution has failed to examine very important witness rendering the veracity of the prosecution case unreliable. It has been argued that PW3 as well as the other witnesses have stated that the brother of PW3 was also present during the occurrence and has witnessed the entire incident resulting in the death of his mother. However, the said brother of the PW3 has not been examined by the prosecution in support of its case giving rise to an adverse inference.

47. In this regard Learned counsel for the appellant has relied upon the decision of **Meharaj Singh Vs. State of U.P.**

reported in **(1994) 5 SCC 188**. In the aforesaid decision, it was laid down by the Hon'ble Court that,

14. It is interesting in this connection also to note that Satkari PW 5 named Resham also as an eyewitness. The High Court rightly held Satkari to be a chance witness also but the prosecution has not explained as to why Resham who was alleged to be an eyewitness has not been examined. According to Balbir PW 2, Jog Raj was also an eyewitness. He too has not been examined. Shiv Charan PW 4, also named Resham and Jog Raj as eyewitnesses. Thus, it appears to us that a concerted effort was made by the prosecution witnesses to introduce Resham and Jog Raj as false eyewitnesses in the case but since they have not been examined, it would be fair to draw a presumption, that they perhaps were not prepared to support the false case. The High Court while setting aside the order of acquittal did not deal with these various infirmities.

48. True it is, PW3 has stated that at the time of incident, his mentally challenged brother was in the room with him and his mother. He has also stated that his brother was a mentally challenged boy who was not able to speak properly being a patient of epilepsy. PW5 has stated in his deposition that he had two sons Surya (PW3) and Debashish and that Debashish was physically handicapped. On behalf of appellant, it has been argued that the other son of the victim, i.e. Debashish has not been examined by the prosecution. It has also been argued that the prosecution did not prove the mental incapacity of said

Debashish to depose, nevertheless, withheld his testimony which gives rise to an adverse inference. However, the evidence on record speaks about mental incapacity of the said eye witness Debashish. There appears to be no point in accepting part testimony of witnesses as regards presence of Debashish at the scene of crime but discarding part of that with regard to his physical inability. In course of trial, the prosecution witnesses were never confronted with any suggestion to the effect that the said Debashish was not suffering from any physical inability or that the prosecution has intentionally withheld his testimony. Though, not specifically proved, the evidence of the prosecution appears to be sufficient enough to explanation for not examining Debashish for his physical incapacity or inability to depose. Therefore, non-examination of the said Debashish does not seem to stir any dent in the veracity of the prosecution case as such.

49. As regards the motive behind the crime, it has been argued that the prosecution has not been able to prove the motive, strong enough, to substantiate the murder of the victim.

50. Learned counsel for the appellant has cited the decision of **Mulakh Raj Vs. Satish Kumar reported in (1992) 3 SCC 43**. I am afraid, the ratio laid down in the aforesaid decision, though a case concerning circumstantial evidence, goes against the proposition of the appellant. In this case the Hon'ble Supreme Court laid down that,

***17. The question then is,.....
The failure to discover the motive of an offence does not signify its non-existence. The failure to prove motive is not fatal as a matter of law. Proof of motive is never an indispensable for conviction. When facts are clear it is immaterial that no motive has been proved. Therefore, absence of proof of motive does not break the link in the chain of circumstances connecting the accused with the crime, nor militates against the prosecution case."***

51. In this regard learned Advocate for the appellant also relied upon the decision in the case of **State of U.P. Vs. Moti Ram** reported in **1990 SCC (Cri) 585**. The Hon'ble Court held in the aforesaid decision that,

***"21. So far as the motive is concerned,.....
But at the same time, one should not lose sight of the fact that the prosecution party which was also entertaining the same amount of animosity against the accused party had sufficient motive to implicate all the leading persons of the accused party with the offence in question. As repeatedly said, motive is a double-edged weapon and that it could be made use of by either party to wield that weapon of motive against each other. Therefore,***

the key question for consideration is whether the prosecution had convincingly and satisfactorily established guilt of all or any of the accused beyond all reasonable doubt by letting in reliable and cogent evidence.

52. The proposition laid down in this judgment is equally of little assistance to the appellant. In plethora of judgments, the Hon'ble Supreme Court and different High Courts have observed that in presence of direct evidence, motive loses its importance. Similarly, the case of **Stae of Punjab Vs. Gurmail Singh [1990 Supp SCC 67]** relied upon by the appellant, relates to a case based on circumstantial evidence, contrary to the case at hand where direct evidence has been relied to secure the conviction of the accused.

53. We are of considered opinion that Once we find that the eyewitness account of PW 3 is corroborated by material particulars and is reliable, we cannot discard his evidence only on the ground that there are some discrepancies in the evidence of PW 2, PW 3, PW 4, PW5 and PW 6. We are not unmindful of the fact that in the deposition of witnesses there are always normal discrepancies due to normal errors of observation, loss of memory, mental disposition of the witnesses and the like. Unless, therefore, the discrepancies are

“material discrepancies” so as to create a reasonable doubt about the credibility of the witnesses, the Court will not discard the evidence of the witnesses. Similarly, we are also of the opinion that motive becomes relevant as an additional circumstance in a case where the prosecution seeks to prove the guilt by circumstantial evidence only.

54. In the instant case the prosecution appears to have relied upon the direct ocular evidence of the prosecution witnesses specially that of PW3. The learned trial court upon considering the direct oral evidence, together with the medical evidence, found it to be trustworthy enough, to record the conviction of the appellant. The prosecution has made out a case that the appellant had a bad eye on the victim from prior to the occurrence and that there were altercations and ‘salisi’ between the parties which could have driven the accused/appellant to carry out the crime. Such a case could be considered as an additional circumstance to prove the guilt of the appellant in addition to other evidence. But, since there is direct ocular evidence of PW3, in whose presence, the crime was committed by the

appellant, the factum of previous altercations and enmity between the parties prior to the occurrence, loses its relevance, as a motive for the crime. We are also not unmindful of the fact that in course of trial, the defence has not very vehemently challenged the prosecution case with regard to previous differences between the appellant and the victim. There is no cross examination on the part of the appellant when the witnesses stated that there was an occurrence of altercation and threatening with the victim in the evening of 09.10.2016 prior to the incident involved in the case at hand. The matter was allegedly reported to PW2 by the victim over phone.

55. To sum up, from the evidence and other materials on record it appears that the prosecution appears to have been successfully able to bring home the charges levelled against the accused/appellant beyond all reasonable doubts. We have already held that tender age of witness does not render him/her untrustworthy, so long as he/she surpasses the test of prudence in accordance with the provisions contained in section 118 of Indian Evidence Act. We have also come to a conclusion that the testimony of PW3 appears to be well

founded and suitably corroborated by medical evidence giving rise to a definite discernment about the guilt of the appellant in reference to the murder of the victim and that minor contradictions cannot stand in the way to vitiate the prosecution case.

56. In the aforesaid facts and circumstances of the case and in the light of discussions made hereinbefore, the impugned judgment passed by learned trial court in Sessions Trial No.05 (June) 2017 corresponding to Sessions Case No. 56 of 2017 does not warrant any interference. The conviction and sentence passed in the impugned judgement is hereby upheld.

57. Connected applications, if any, also stand disposed of.

58. Period of detention already undergone by the appellant during investigation, enquiry and trial shall be set off in terms of the provisions of section 428 of Code of Criminal Procedure.

59. Trial court records along with copies of this judgment be sent down at once to the learned trial Court as well as the Superintendent of Correctional Home for necessary compliance.

60. The appellant, if on bail, shall surrender to the learned trial court to undergo the remaining part of his sentence.

61. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

62. CRA No 296 of 2020 is accordingly dismissed and disposed of.

[MD. SHABBAR RASHIDI, J]

63. I agree.

[DEBANGSU BASAK, J.]