

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.417 of 2016

Arising Out of PS. Case No.-328 Year-2013 Thana- GHANSHYAMPUR District- Darbhanga

Rudal Chaupal S/o late Shibat Chaupal Resident of village Navtoliya, PS
Ghanshyampur District Darbhanga.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr. Prince Kumar Mishra, Amicus Curiae
For the Respondent/s : Mr. Sujit Kumar Sinha, A.P.P.

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JUSTICE RUDRA PRAKASH MISHRA)

Date : 04-01-2024

The present criminal appeal has been filed by the appellant under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') challenging the judgment of conviction dated 02.04.2016 and order of sentence dated 04.04.2016, passed by learned Additional Sessions Judge-I, Benipur, Darbhanga in Sessions Trial No. 206 of 2014, arising out of Ghanshyampur P.S. case No. 328 of 2013, G.R. No. 1336/16, whereby and whereunder the Trial Court has convicted the appellant for the offence under Section 302 of the Indian Penal Code (hereinafter referred to as the 'I.P.C.') and sentenced to undergo rigorous imprisonment for



life and a fine of Rs. 10,000/- and in default of payment of fine to further undergo additional six months imprisonment.

2. The prosecution case, as per the fardbeyan of the informant recorded by S.I. of Ghamshyampur police Station on 20.12.2013 at 12.10 a.m. is that today itself informant went to Ghamshyampur to sell milk and at around 11.00 a.m., her younger son Ganesh Chaupal, aged about 10 years, came to Ghanshyampur and told that his father (Shivat Chaupal) was attacked by elder brother Rudal Chaupal, son of Shivat Chaupal, who has torn the head and cut the mouth with a *dabia* (sharp edged weapon) due to which the father got unconscious and blood started oozing in the courtyard of the house located in village Vudaiv, Navtolia. After hearing this, when the informant was on her way to home, the villagers were carrying the victim on a cot for treatment and then she also took him along and reached the Primary Health Centre, Ghanshyampur for treatment where the doctor immediately referred him by ambulance to D.M.C.H., Darbhanga for proper treatment but he died on the way in Ghanshyampur in front of the Block. The reason for the incident is that there was a love affair between her elder son Rudal Chaupal's wife Phooltodni Devi and her younger son Jagarnath Chaupal and when her elder son came to know the



incidence, there was an altercation took place between the father and son and with an intention to kill her husband, he killed her husband after making him seriously injured. The informant further stated that today's morning, informant's son Rudal Chaupal had gone to his in-laws house at Ghanshyampur and after being instigated, he killed her husband.

3. On the basis of fardbeyan of the informant, Ghanshyampur P.S. case No. 328 of 2013 was registered under Sections 302, 34 and 120B of the I.P.C. Thereafter, the Investigating officer carried out the investigation and submitted charge-sheet. On the basis of charge-sheet, the Magistrate took cognizance of the case and the case was committed to the Court of Sessions. Charges were framed against the appellant on which he pleaded not guilty and claimed to be tried.

4. During the trial, in order to substantiate the charges against the accused person, the prosecution examined as many as eight witnesses, namely, P.W.1 Ganga Prasad Yadav, P.W.2 Badri Chaupal, P.W. 3 Chinai Chaupal, P.W.4 Jasiya Devi, P.W.5 Dr. Prafful Kumar Das (doctor who conducted the post-mortem examination), P.W.6 Rampari Devi, (informant), P.W.7 Suresh Chandra Mishra (I.O.) and P.W. 8 Ganesh Chaupal. In support of the case, the prosecution also produced documentary evidence.



The defence has neither produced any witness nor any document was exhibited on their behalf. The statements of the accused person were recorded under section 313 of the Cr.P.C and after conclusion of the trial, the learned trial Court convicted the appellant in the manner stated above.

5. At the outset, it is pertinent to note that when the matter was called out, the learned counsel for the appellant has not remained present and as the appeal is pending since the year 2016 and the appellant/convict is in custody since 21.12.2013, this Court had no option but to proceed with the matter. We, therefore, asked learned Prince Kumar Mishra to assist the Court and he has been appointed as Amicus Curiae for the aforesaid purpose. Hence, we have heard learned Advocate Mr. Prince Kumar Mishra for the appellant/accused as Amicus Curiae and Mr. Sujit Kumar Sinha, learned A.P.P. for the State.

6. Learned Amicus Curiae appearing on behalf of the appellant submits that P.Ws. 1, 2, 3, 4 and 6 are hearsay witnesses as they all arrived at the place after the occurrence took place. P.W. 6 is the informant of this case, who is also not an eye witness but hearsay witness as she has stated in the fardbeyan that she left the house for Ghanshyampur at 9.00 a.m. to sell milk and at about 11.00 a.m., her younger son (P.W.



8) informed that the accused/appellant hit her husband with a *dabia* on the head and cut the mouth due to which he got unconscious and while hearing the same she left for home and on the way found that villagers were taking the victim for treatment. Then, she also went along with villagers to the Primary Health Centre, Ghanshyampur where the doctor referred him for better treatment to D.M.C.H. Darbhanga but the victim died on the way to the hospital in front of Ghanshyampur Block. The said witness in paragraph 14 of her cross-examination has stated that when she came home, she saw her husband and took him to the hospital. Learned Amicus Curiae has further pointed out that P.W. 8, who is a child witness, has stated in his statement on oath that at 10 O' clock on that day when he was warming himself in the courtyard his elder brother Rudal hit his father with rod and *dabia* (sharp edged weapon) on his head and mouth due to which he fell down and then his father was taken to Ghanshyampur. The said witness in paragraph 12 of his cross-examination has stated that while he was coming from the village, his aunt told him that his father has been killed by Rudal Chaupal. On hearing this, he went to tell his mother whom he met on the way and told her that his brother has killed his father. Thus, learned Amicus Curiae has pointed out the contradictions



in the statement of P.Ws. 6 and 8. Learned Amicus Curiae submits that P.W. 8 is also not an eye witness but a projected eye witness. Learned Amicus Curiae has finally submitted that the Trial Court has convicted the appellant/accused only relying upon the deposition given by P.W.8, who is a child witness. At this stage, learned Amicus Curiae placed reliance upon the decisions rendered by the Hon'ble Supreme Court in the case of ***Pradeep Vs. State of Haryana***, reported in ***2023 SCC OnLine SC 777*** and would refer to paragraphs 7 to 10 of the said decision. Learned Amicus Curiae also placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of ***P. Ramesh Vs. State represented by Inspector of Police***, reported in ***(2019) 20 SCC 593*** and has mainly placed reliance upon paragraphs 13 to 16 of the said decision. After referring to the aforesaid decision, learned counsel has contended that the deposition of child witness, who is aged about 10 years at the time of occurrence, is to be discarded. Learned Amicus Curiae, therefore, has urged that when the prosecution has failed to prove the case against the appellant/accused beyond reasonable doubt, the Trial Court has committed grave error while recording the order of conviction. He, therefore, urged that the impugned judgment and order be quashed and set aside.



7. On the other hand, learned A.P.P. has vehemently opposed this appeal. Learned A.P.P. has rebutted the arguments advanced by learned Amicus Curia for the appellant. He has submitted that the judgment of conviction and order of sentence under challenge requires no interference as the prosecution has been able to prove its case beyond all reasonable doubts. From the evidence, which has been adduced by the prosecution, the guilt of the appellant is satisfactorily proved and there is no infirmity in the judgment of conviction and order of sentence rendered by the Trial Court. Learned A.P.P., therefore, urged that this appeal be dismissed.

8. We have considered the submissions of learned Amicus Curia for the appellant and learned A.P.P. for the State and also perused the material placed on record including the deposition of prosecution witnesses and the other evidence produced before the Trial Court. From perusal of the depositions, it appears that P.W. 1 has stated in his deposition that he reached the place of occurrence after half an hour on hearing the *hulla* and saw that the father of Rudal was fell down. P.W. 2 in his deposition has stated that he reached the place of occurrence after hearing the *hulla* and saw that Shibat Chaupal has died. P.W. 3 has stated in his deposition that he reached the place after



1-2 hours of the incidence. Though, in his examination-in-chief, P.W. 3 has stated that Rudal Chaupal has killed Shibat Chaupal but in his cross-examination, he stated that he reached the place after 1-2 hours of the incidence and cannot tell how the death took place. P.W. 4, in her examination on oath, has stated that she saw Shivat Chaupal in the *angan* and Rudal Chaupal committed marpit with him but in cross-examination, she has stated that at that time, she was in the field.

9. P.W.-5 is the doctor who has conducted post-mortem examination of the body of the deceased and found following ante-mortem injuries:-

“(I) one incised wound measuring 3” X ½ “ X mouth cavity deep was found below left lower lip cutting the left lower jaw and gums.

(ii) one incised wound 2” X 1/2” X 1/3” was found over left side of forehead 1/2” below hair line, underlined muscled and left frontal bone shows concomitant cuts.

(iii) Right side of the forehead showed depression in 4” diameter area with surface bruising, right frontal bone showed depressed fracture 4” diameter. There was extra dural and sub dural haemotoma over both hemisphere of the brain with collection of blood and blood clots at base of central cavity.

(iv) one incised wound 1/2” X 1/4” X 1/8” over left thigh in lower part on lateral aspect, margin were clean cut and regular and covered with blood and blood clots. On dissection of both sides of heart were empty both lung liver, spleen and both kidney were pale.

Stomach contains hundred ml. Blood with pale gastric mucosa bladder was empty.



Opinion- Above noted injuries were antemortem. Injury No. 1, 2 and 4 were caused by sharp cutting heavy weapon.

While injury No. 3 caused by hard and blunt heavy object.

Death was due to haemorrhage, concussion and compression of brain. Time since death was within 04 to 08 hrs from the time of P.M. examination.”

10. P.W. 6 is the informant of this case. In her fardbeyan, she has stated that she left the house for Ghanshyampur at 9.00 a.m. to sell milk and at about 11.00 a.m., her younger son (P.W. 8) informed that the accused/appellant hit her husband with a *dabia* on the head and cut the mouth due to which he got unconscious and while hearing the same she left for home and on the way found that villagers were taking the victim for treatment. Then, she also went along with villagers to the Primary Health Centre, Ghanshyampur where the doctor referred him for better treatment to D.M.C.H. Darbhanga but the victim died on the way to the hospital in front of Ghanshyampur Block. In her examination on oath, P.W. 6 has stated that she went to Ghanshyampur then her son Ganesh (P.W.8) informed about the incidence. She got information that her husband was hit by *dabia* and then she came to the Ghanshyampur for treatment of her husband. From there, her husband was referred to Darbhanga for better treatment but he died on the way in



Ghanshyampur. In paragraph 12 of her cross-examination, she has stated that her son Ganesh (P.W.8) informed him about the incident. The said witness in paragraph 14 of her cross-examination has stated that when she came home, she saw her husband and took him to the hospital where her husband died.

11. P.W. 7 is the I.O. of the case. The said witness has stated on oath that during investigation, he inspected the place of occurrence and prepared a map. Again took the statement of the informant and thereafter he arrested the accused and remanded him. The accused has accepted his guilt in his confessional statement. In paragraph 42 of his cross-examination, he deposed the deceased was killed by sharp edged weapon. In paragraph 29 of his cross-examination, he stated that he recovered one rod near Tulsi tree and did not found any other weapon. After completion of investigation, he submitted the charge-sheet.

12. P.W. 8, aged about 13 years at the time of oath and 10 years at the time of occurrence, has stated in his statement on oath that the incidence took place about 2 years ago. On that day at 10 O' clock when he was warming himself in the courtyard his elder brother Rudal hit his father with rod and *dabia* (sharp edged weapon) on his head and mouth due to which he fell down and then his father was taken to Ghanshyampur. In paragraph 7



of the cross-examination, he deposed that the incident occurred at 10 O'clock on that day when he went to school and came from school in tiffin. Further in paragraph 8, he stated that tiffin time is 1.00 p.m. and he came from school in tiffin on that day. The said witness in paragraph 12 of his cross-examination has stated that while he was returning from the village, his aunt told him that his father has been killed by Rudal Chaupal. On hearing this, he went to tell his mother whom he met on the way and told her that his brother has killed his father.

13. From perusal of the depositions, it would emerge that P.W. 1 to 4, 6 are hearsay witnesses, P.W. 5 is the doctor and P.W. 7 is the I.O. of the case. P.W. 8, claimed to be an eye witness but rather a projected eye witness, has stated on oath that on that day at 10 O'clock when he was warming himself in the courtyard, his elder brother Rudal hit his father with rod and *dabia* (sharp edged weapon) on his head and mouth due to which he fell down and then his father was taken to Ghanshyampur. In paragraph 7 of his cross-examination, he stated that on that day he went to school at 10.00 a.m. and came from school in tiffin. Further in paragraph 8, he has stated that School's tiffin time is 1.00 p.m. In paragraph 10 of his cross-examination, he stated that it takes five minutes to go to school. The said witness in



paragraph 12 of his cross-examination has stated that while he was returning from the village, his aunt told him that his father has been killed by Rudal Chaupal. On hearing this, he went to tell his mother (P.W.6) whom he met on the way and told her that his brother has killed his father. Further P.W. 6 (informant), in her examination on oath, has stated that she went to Ghamshyampur to sell milk where her son Ganesh (P.W.8) informed about the incidence that her husband was hit by dabia and then she came to the Ghanshyampur for treatment of her husband. From there, her husband was referred to Darbhanga for better treatment but he died on the way in Ghanshyampur. In paragraph 12 of her cross-examination, P.W. 6 has stated that her son Ganesh (P.W. 8) informed him about the incident. The said witness in paragraph 14 of her cross-examination has stated that when she came home, she saw her husband and took him to the hospital where her husband died. Thus, there are vital contradictions in the depositions of the P.W. 8 and P.W. 6. So far the medical evidence is concerned, there are two types of injuries, one is from sharp cutting weapon and another is of hard and blunt substance. But a rod (hard and blunt substance) is recovered from the place of occurrence.



14. In the case of ***Pradeep (supra)***, the Hon'ble Supreme Court has observed in Para-7 to 10 as under:-

“7. We have carefully considered the submissions. The fate of the case depends on the testimony of the minor witness Ajay (PW-1). Under Section 118 of the Evidence Act, 1872 (for short, “the Evidence Act”), a child witness is competent to depose unless the Court considers that he is prevented from understanding the questions put to him, or from giving rational answers by the reason of his tender age. As regards the administration of oath to a child witness, Section 4 of the Oaths Act, 1969 (for short “Oaths Act”) is relevant. Section 4 reads thus:

“4. Oaths or affirmations to be made by witnesses, interpreters and jurors.—(1) Oaths or affirmations shall be made by the following persons, namely:—

(a) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any court or person having by law or consent of parties authority to examine such persons or to receive evidence;

(b) interpreters of questions put to, and evidence given by, witnesses; and

(c) jurors:

Provided that where the witness is a child under twelve years of age, and the court or person having authority to examine such witness is of opinion that, though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation, the foregoing provisions of this section and the provisions of Section 5 shall not apply to such witness; but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth.



(2)

8. Under the proviso to sub-Section (1) of Section 4, it is laid down that in case of a child witness under 12 years of age, unless satisfaction as required by the said proviso is recorded, an oath cannot be administered to the child witness. In this case, in the deposition of PW-1 Ajay, it is mentioned that his age was 12 years at the time of the recording of evidence. Therefore, the proviso to Section 4 of the Oaths Act will not apply in this case. However, in view of the requirement of Section 118 of the Evidence Act, the learned Trial Judge was under a duty to record his opinion that the child is able to understand the questions put to him and that he is able to give rational answers to the questions put to him. The Trial Judge must also record his opinion that the child witness understands the duty of speaking the truth and state why he is of the opinion that the child understands the duty of speaking the truth.

9. It is a well-settled principle that corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. A child witness of tender age is easily susceptible to tutoring. However, that by itself is no ground to reject the evidence of a child witness. The Court must make careful scrutiny of the evidence of a child witness. The Court must apply its mind to the question whether there is a possibility of the child witness being tutored. Therefore, scrutiny of the evidence of a child witness is required to be made by the Court with care and caution.

10. Before recording evidence of a minor, it is the duty of a Judicial Officer to ask preliminary questions to him with a view to ascertain whether the minor can understand the questions put to him and is in a position to give rational answers. The Judge must be satisfied that the minor is able to understand the questions and respond to them and understands the importance of speaking the truth. Therefore, the



role of the Judge who records the evidence is very crucial. He has to make a proper preliminary examination of the minor by putting appropriate questions to ascertain whether the minor is capable of understanding the questions put to him and is able to give rational answers. It is advisable to record the preliminary questions and answers so that the Appellate Court can go into the correctness of the opinion of the Trial Court.”

15. In the case of **P. Ramesh (supra)**, the Hon’ble Supreme Court has observed in Paragraphs-13 to 16 as under:-

*“13. Section 118 [“**118. Who may testify.**— All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. Explanation.—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.”] of the Evidence Act, 1872 deals with the competence of a person to testify before the court. Section 4 [“**4. Oaths or affirmations to be made by witnesses, interpreter and jurors.**—(1) Oaths or affirmations shall be made by the following persons, namely:(a) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any court or person having by law or consent of parties authority to examine such persons or to receive evidence;(b) interpreters of questions put to, and evidence given by, witnesses; and(c) jurors:Provided that where the witness is a child under twelve years of age, and the court or person having authority to examine such*



witness is of opinion that, though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation, the foregoing provisions of this section and the provisions of Section 5 shall not apply to such witness; but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth.(2) Nothing in this section shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, unless he is examined as a witness for the defence, or necessary to administer to the official interpreter of any court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.”] of the Oaths Act, 1969 requires all witnesses to take oath or affirmation, with an exception for child witnesses under the age of twelve years. Therefore, if the court is satisfied that the child witness below the age of twelve years is a competent witness, such a witness can be examined without oath or affirmation. The rule was stated in *Dattu Ramrao Sakhare v. State of Maharashtra* [*Dattu Ramrao Sakhare v. State of Maharashtra*, (1997) 5 SCC 341 : 1997 SCC (Cri) 685] , where this Court, in relation to child witnesses, held thus : (SCC p. 343, para 5)

“5. ... A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of



a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored.”

14. A child has to be a competent witness first, only then is her/his statement admissible. The rule was laid down in a decision of the US Supreme Court in Wheeler v. United States [Wheeler v. United States, 1895 SCC OnLine US SC 220 : 40 L Ed 244 : 159 US 523 (1895)] , wherein it was held thus : (SCC OnLine US SC para 5)

“5. ... While no one would think of calling as a witness an infant only two or three years old, there is no precise age which determines the question of competency. This depends on the capacity and intelligence of the child, his appreciation of the difference between truth and falsehood, as well as of his duty to tell the former. The decision of this question rests primarily with the trial Judge, who sees the proposed witness, notices his manner, his apparent possession or lack of intelligence, and may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligations of an oath. As many of these matters cannot be photographed into the record the decision of the trial Judge will not be disturbed on review unless from that which is preserved it is clear that it was erroneous.”

15. In Ratansinh Dalsukhbhai Nayak v. State of Gujarat [Ratansinh Dalsukhbhai Nayak v. State of Gujarat, (2004) 1 SCC 64 : 2004 SCC (Cri) 7. Subsequently, relied upon in Nivrutti Pandurang Kokate v. State of Maharashtra, (2008) 12 SCC 565 : (2009) 1 SCC (Cri) 454] , this Court held thus : (SCC pp. 67-68, para 7)

“7. ... The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his



understanding of the obligation of Patna High Court CR. APP (DB) No.1039 of 2015 dt.01-11-2023 20/24 an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of makebelieve. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness.”

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 capability 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. [Ratansinh Dalsukhbhai Nayak v. State of Gujarat, (2004) 1 SCC 64 : 2004 SCC (Cri) 7] 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. [Sarkar, Law of Evidence, 19th Edn., Vol. 2, Lexis Nexis, p. 2678 citing Director of Public Prosecutions v. M, 1998 QB 913 :(1998) 2 WLR 604 : (1997) 2 All ER 749 (QBD)] 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.”

16. From the aforesaid decisions rendered by the Hon'ble Supreme Court, it can be said that before recording evidence of a child, it is the duty of Judicial Officer to ask preliminary question to him/her with a view to ascertain whether the child can understand the questions put to him/her and is in a position to give rational answers. The Judge must be satisfied that the child is able to understand the questions and respond to them and understands the importance of speaking the truth. The Judge has to make a proper preliminary examination of a child by putting appropriate questions to ascertain whether the child is capable of understanding the question put to him. It can be further said that in order to determine the competency of the child witness, the Judge has to form his/her opinion. The Judge is at liberty to test i.e. **Vior Dire Test** (a preliminary examination to determine competency) the capacity of a child witness. The competency of a child witness can be ascertained by questioning him to find out the capability to understand the occurrence witnessed and to speak the truth before the Court. In criminal proceedings, the person of any age, is competent to give evidence if he is able to understand questions put as a witness



and give such answers to the questions that can be understood. A child of tender age can be allowed to testify if he has the intellectual capacity to understand the questions and give rational answers thereto. However, a child becomes incompetent in a case the Court considers that the child was unable to understand the questions and answer them in a coherent and comprehensible manner.

17. Keeping in view the aforesaid decisions, if the facts of the present case are examined, it transpires that the Trial Court has not carried out such **Vior Dire Test** by putting question to the child witness with a view to ascertain whether the P.W. 8 is capable to understand the question put to him. Thus, we are of the view that the reliance placed by the learned Trial Court only on the deposition given by P.W. 8, who is the child witness, aged about 13 years at the time of oath and 10 years at the time of occurrence, is misplaced. Therefore, the Trial Court has wrongly placed reliance upon the said deposition of the child witness. Thus, in view of the observation made hereinabove, the deposition given by the child witness cannot be believed. In view of the facts and circumstances discussed above, it is apparent that there are major contradictions in the depositions of the witnesses, especially of P.W. 6 and 8. Thus, we are of the



view that the Trial Court has committed grave error by recording conviction of the appellant.

18. It is fundamental principle of criminal jurisprudence that it is the duty of the prosecution to prove any criminal case beyond reasonable doubt. If the prosecution fails to prove its case beyond reasonable doubt then benefit of doubt will be given in favour of the accused person. This Court is of the view that since the prosecution has failed to prove its case beyond reasonable doubt, the impugned judgment and order passed by the learned Trial Court is required to be quashed and set aside.

19. The impugned judgment of conviction dated 02.04.2016 and order of sentence dated 04.04.2016 passed by learned Additional Sessions Judge-I, Benipur, Darbhanga in Sessions Trial No. 206 of 2014, arising out of Ghanshyampur P.S. case No. 328 of 2013, G.R. No. 1336/16, is quashed and set aside. The appellant is acquitted of the charges levelled against him by the learned Trial Court. He is directed to be released forthwith, if not required in any other case.

20. Accordingly, the appeal is allowed.

21. Before parting with the appeal, I record my appreciation for the able assistance rendered by Mr. Prince Kumar Mishra, learned Amicus Curiae.



22. The Patna High Court, Legal Services Committee is, hereby, directed to pay ₹ 5,000 (Rupees Five Thousand) to Mr. Prince Kumar Mishra, learned Amicus Curiae in Criminal Appeal (DB) No. 417 of 2016 as consolidated fee for the services rendered by him.

(Vipul M. Pancholi, J)

(Rudra Prakash Mishra, J)

Pankaj/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	11.01.2024
Transmission Date	11.01.2024

