



2025:CGHC:3387-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRA No. 1573 of 2018**

Sukwariya Bai W/o Devnarayan Aged About 27 Years R/o Village Bhukbhuki, Police Station Khadgawa, District Korea Chhattisgarh, District : Koriya (Baikunthpur), Chhattisgarh

... Appellant(s)**versus**

State Of Chhattisgarh Through The Station House Officer, Police Station Khadgawa, District Korea Chhattisgarh, District : Koriya (Baikunthpur), Chhattisgarh

... Respondent(s)

For Appellant(s) : Mr. G.V.K. Rao, Advocate

For Respondent(s) : Mr. Nitansh Jaiswal, Panel Lawyer

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board**Per Ramesh Sinha, Chief Justice****20.01.2025**

1. This criminal appeal under Section 374(2) of the CrPC is directed against the impugned judgment of conviction and order of sentence dated 27.07.2018 passed by the learned Second Additional Sessions Judge, Manendragarh, District- Korea (C.G.)



in Sessions Trial No.104/2014, by which the appellant herein has been convicted for offence under Section 302 of the IPC and sentenced to undergo Imprisonment for life and fine of Rs.1000/-, in default of payment of fine, to further undergo S.I. for 03 months and under Section 326 of the IPC and sentenced to undergo Rigorous Imprisonment for 03 years and fine of Rs.1000/-, in default of payment of fine, to further undergo S.I. for 03 months.

2. Case of the prosecution, in brief, is that on the date of incident i.e. 19/05/2014, the complainant Devnarayan Gond (PW-2) had gone to the house of Gajrup Singh Gond of the village to work in a marriage function. His mother Kamla Bai, father Thakur Prasad, sons Lallu Prasad and Shiv Prasad, daughter Rajkumari and his wife Sukavariya (accused) were in the house. Then Lallu Prasad (PW-7) and Raghu (PW-5) came to Gajrup Singh Gond's house and informed the complainant that Kamla Bai, Thakur Prasad and Rajkumari had been seriously injured. When the complainant came to his house, he saw that his mother Kamla Bai was lying on a cot outside the house, moaning with serious injuries on her face and mouth and his father Thakur Prasad was lying on the ground, with injuries on his head, legs and face and his daughter Rajkumari had also injured in the mouth. Regarding the incident, Rajkumari told that Sukawariya (accused) was leaving the house with Mahua in a sack and when she refused, Sukawariya beat Kamala Bai, Thakur Prasad and Rajkumari with an iron crowbar and ran away from the house. The complainant informed his



neighbours Santosh (PW-6) and Sukhmaniya (PW-10) about the above and took Kamala Bai and Thakur Prasad in Kallu's car of the same village to Khargawan Hospital for treatment, from where, on referral, he took them to District Hospital, Baikunthpur, where Kamala Bai and Thakur Prasad died during treatment at night. Injured Rajkumari was also treated at Baikunthpur Hospital.

3. On the information of the incident given by the complainant Devnarayan (PW-2) in the police station Baikunthpur, Sub-Inspector J.S. Kanwar (PW-16) filed an unnumbered Merg Intimation No.-0/2014 (Ex.P-3) regarding the death of Thakur Prasad and Kamla Bai and against the accused, an unnumbered First Information Report No. 0/2014 was registered under sections 302, 323 of the Indian Penal Code, 1860 (Ex.P-4). Thereafter on the same date i.e. 20/05/2014, the panchnama of the dead bodies of deceased Kamla Bai and deceased Thakur Prasad (Ex.P-5 and Ex.P-6 respectively) was prepared in the presence of witnesses, and for getting the post-mortem of their bodies done, duty certificate (Ex.P-19) was issued to constable Arju Ram Morche, and for post mortem the bodies were sent by writing a complaint (Ex.P-14 and P-15) to the Medical Officer of District Hospital, Baikunthpur. wherein, Dr. H.S. Shende (PW-13) conducted the postmortem over the dead body of the deceased Thakur Prasad and deceased Kamla Bai (Ex.P-14A and Ex.P-15A respectively) and while conducting the postmortem, he found uncountable



injuries over the dead body of the deceased Thakur Prasad and deceased Kamla Bai.

4. Some of the injuries sustained by Thakur Prasad as per the postmortem report are as follows:-

“(i) On external examination of the dead body, it was found that Rigor Martis was present in the dead body, his mouth was swollen, his tongue was inside his teeth, eyes were closed, both pupils of the eyes were dilated.

(ii) On the front part of his right shoulder there was a stapes sulcus (stab wound) measuring 3 cm * 1/2 cm upto the depth of bone.

(iii) On the left side below the eye, there was a stapes sulcus measuring 3 cm * 1/2 cm upto the depth of bone which was present in the region below the left eye and there was fracture in the maxillary bone of the left side, there was a torn wound on the upper part of the left ear on its lower side to its full width in which blood clots were present.

(iv) The left thigh was deformed due to injury and his femur bone was broken. On the top of the head, there was a wound measuring 8 cm * 6 cm from center to center. There was swelling in size, a contusion was present on the upper left side of the chest running across the entire width of the chest, 3rd, 4th and 5th ribs on the left side were broken and 6th, 7th and 8th ribs on the right side were fractured.



(v) There was a fracture on the lower side of the sternum bone, there was a contusion of 10 cm * 4 cm on the left breast region which was reddish in colour, all the above injuries were caused antemortem.

(vi) Numerous stab wounds were found on the body of the deceased, which could not be counted .

(vii) On internal examination, it was found that the membranes and bones of the head of the deceased, there were blood spots in the brain, there were fractures in the diaphragm, ribs and shoulder blades, the lung was congested and the lung was torn in the area where the injury was present in the chest, there was multiple rupture in the left lung.

(viii) Both the chambers of the heart were empty. The cavity of the lung was completely filled with blood. The urinary bladder was empty, the kidney was bruised, both the kidneys and the spleen were crushed and torn. The food bag was filled with black blood, no food was found in it.

5. Some of the injuries sustained by deceased Kamla Bai as per the postmortem report are as follows:-

“(i) On external examination of the dead body, it was found that stiffness was present in the body, mouth was open, her tongue was between her teeth, pupils of both eyes



were dilated, her face was smeared with blood and blood clots were present.

(ii) On the maxillary area of left side, there was a stab wound measuring 3 x 1 cm upto the depth of bone on which blood clots were present.

(iii) on the forehead of left side, there was a torn wound measuring 3 x 1/4 cm upto the depth of bone on which blood clots were present.

(iv) On the left side of the nose there was a torn wound measuring 1 x 1/4 cm upto the depth of skin on which blood clots were present.

(v) There was a stab wound 2 x 1 cm deep to the bone above the eye on the left side and the bone below it was broken. A stab wound was present on the left side of the upper lip upto the cheek bone in the cavity of the mouth.

(vi) Three molars of the left side were broken due to the injury and one molar tooth was also broken and the maxillary bone was also broken, the jaw on the left side was also broken.

(vii) There was a stapes furrow (stab wound) on the right arm on its outer and middle side measuring 2.5 x 1/2 cm deep to the flesh. There was a stapes furrow 2.5 x 1/2 cm deep to the flesh on the upper part of the right thigh. There was a stapes furrow 2 x 1/2 cm deep to the bone in the



region behind the ear on the left side measuring 2 x 1/2 cm deep to the bone.

(viii) In the left side temporal region of the head there was a cut wound measuring 4 x 1.5 cm to the depth of the bone, in which the bone concerned was broken. On the left side of the nose there was a stab wound measuring 2 x 1.5 cm to the depth of the bone, which was broken. All the above injuries were inflicted before death.

(vii) On internal examination, it was found that the brain and the spinal cord was pale, blood was found clotted inside the skull, the diaphragm on top of the chest, the coccyx were healthy. There was blood clot in the throat and windpipe. The right lung, left lung were pale and stained with blood. The upper layer of the heart was healthy and both the chambers of the heart were empty, the abdominal diaphragm and coccyx were healthy. The intestinal membrane was healthy, the food bag was filled with blood, in which no food material of any kind was found. The liver and both the kidneys were pale, the spleen was healthy, the inner and outer genitals were healthy.

The medical officer has given his opinion regarding the injuries and death, according to him Thakur Prasad died due to excessive bleeding due to injury in both kidneys, spleen and left



lung and Kamla Bai also died due to shock due to excessive bleeding due to multiple injuries. The nature of death of both the persons was homicidal in nature.

6. Thereafter, the injuries sustained by the injured Rajkumari was examined by the said medical officer Dr. H.S. Shende (PW-13) and the examination report (Ex.P-16A) was obtained.
7. On receipt of unnumbered Merg Intimation and First Information Report at the police station, Inspector R. Tigga (PW-15) registered Numbered Merg Intimation No. 34/2014 (Ex.P-1) and FIR No. 75/2014 against accused Sukavariya Bai under Section 302, 323 of Indian Penal Code, 1860 (Ex.P-2) at Police Station Khargawan and the case was taken for investigation.
8. During the investigation, Inspector R. Tigga (PW-15) prepared a site map of the incident (Ex.P-5) and seized blood-soaked soil and plain soil from the incident site as per seizure sheet (Ex.P-9). Taking the accused Sukavariya Bai into custody and interrogating her, her memorandum statement (Ex.P-11) was recorded and based on the indication of the accused, an iron crowbar used in the incident was seized from the edge of a field adjacent to the footpath ahead of Dubchhola Bazaar. Seizure was made as per sheet Ex.P-12. While arresting the accused, arrest Panchnama (Ex.P-13) was prepared. Statements of witnesses were recorded under Section 161 of Criminal Procedure Code, 1973. Query report was received regarding the seized iron crowbar and injury



caused to Rajkumari. A report was issued to Tehsildar Chirmiri/Khargawan for making a site map of the incident and the site map prepared by the Patwari (Ex.P-18) was received.

9. After other formal investigation in the case, the final report regarding the crime was presented in the court of Judicial Magistrate First Class, Chirmiri, from where the case was surrendered and transferred by the Hon'ble Sessions Judge, Baikunthpur.
10. On the basis of the materials available in the charge-sheet and evidence available on record, charges were framed against the accused Sukavariya Bai for the offence punishable under Sections 302, 326 of the Indian Penal Code, 1860 and when the charges were read out and explained to her, she denied committing the alleged offence and claimed to be tried.
11. In order to bring home the offence, the prosecution examined as many as 20 witnesses and exhibited 23 documents Exs.P-1 to P-23. Statement of the accused/appellant was recorded under Section 313 of the CrPC in which she denied guilt. However, the appellant-accused examined none in her defence.
12. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment dated 27.07.2018, convicted the appellant for offence under Section 302 and 326 of the IPC and sentenced as mentioned in opening paragraph of this



judgment, against which, this criminal appeal has been preferred by the appellant herein.

13. Mr. G.V.K. Rao, learned counsel for the appellant submits that the appellant is innocent and has not committed any offence and she has been falsely implicated in crime in question. The learned trial court has failed to appreciate that the prosecution has failed to prove any circumstances against the appellant and has wrongly convicted the appellant. The learned trial Court failed to appreciate the fact that there are major contradictions and omissions in the statement of the prosecution witnesses, hence the warrant of conviction of the appellant is bad in law. Further, even if the entire prosecution case is taken as it is, the act of the appellant falls under the exception of sudden and grave provocation, so the conviction of appellant under Section 302 of the IPC is bad in law. The learned trial Court has wrongly convicted the appellant on the basis of seizure of articles, which has not been duly proved. The prosecution has failed to prove that it is the appellant who committed murder of deceased and there is no overt-act proved against the present appellant. Hence, the present appeal deserves to be allowed.
14. On the other hand, Mr. Nitansh Jaiswal, learned Panel Lawyer appearing for the respondent/State supports the impugned judgment and submits that dead body of deceased Thakur Prasad and deceased Kamla Bai were found lying in the house of the appellant, therefore, the appellant was required to explain as to



under what circumstances deceased died in her house. He further submits that the learned trial Court has come to the conclusion regarding involvement of the accused / appellant in the crime in question under the concluding paras of the judgment in which the the learned trial Court has observed all incriminating circumstances against the accused / appellant, which connect him with the instant crime and chain of circumstances are fully linked and completed with each other. Thus, the prosecution has proved its case beyond reasonable doubt and the judgment of the trial Court is just and proper and does not call for any interference by this Court and as such, criminal appeal deserves to be dismissed. He lastly submits that statement of Rajkumari (PW-8) is wholly reliable and trustworthy as she was 11 years at the time of examination and her testimony inspires confidence and she has rightly been relied upon and it is not universal rule that unless testimony of child witness is corroborated by further evidence, her testimony cannot be relied upon and no conviction can be recorded on sole testimony of child witness. He would rely upon the decision of the Supreme Court in the matter of **Shivji Genu Mohite v. State of Maharashtra**¹ and submit that the appellants have rightly been convicted by the trial Court and as such, the appeals deserve to be dismissed.

1 AIR 1973 SC 55



15. We have heard learned counsel appearing for the parties, considered their rival submissions made herein-above and also went through the records with utmost circumspection.
16. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
17. The first question for consideration would be, whether the trial Court was justified in holding that death of deceased to be homicidal in nature ?
18. The trial Court, relying upon the statement of Dr. H.S. Shende (PW-13), who has conducted postmortem on the body of deceased persons, vide Ex.P/14A and Ex.P/15A, has clearly come to the conclusion that Thakur Prasad died due to excessive bleeding due to injury in both kidneys, spleen and left lung and Kamla Bai also died due to shock due to excessive bleeding due to multiple injuries and the nature of death is homicidal. The said finding recorded by the trial Court is a finding of fact based on evidence available on record, which is neither perverse nor contrary to record. Even otherwise, it has not been seriously disputed by the learned counsel for the appellant. We hereby affirm the said finding.
19. The nature of death has not been challenged by the defence in the cross-examination. No such fact and evidence has been revealed in the case that the said injuries to Thakur Prasad and



Kamla Bai were caused in an accident and it is also not possible that the injuries caused to them were self-inflicted. It is noteworthy that no such suggestion has been put forward by the defence in the cross-examination of independent witnesses that Thakur Prasad and Kamla Bai were injured by falling on their own. In such a situation, the evidence of the medical witness is trustworthy and assuming the post-mortem report to be correct, Thakur Prasad's death was due to excessive bleeding due to injury in both kidneys, spleen and left lung and Kamla Bai's death was also due to shock caused by excessive bleeding due to multiple injuries and the nature of death of both the persons is established to be homicide.

20. If we consider the injury caused to Rajkumari in the above incident, then the applicant Devnarayan (PW-2) has stated that Rajkumari had injury in her mouth and her tooth was broken in the said injury. Witness Raghu Pratap (PW-5) and Lallu Prasad (PW-7) have also stated in their testimony that they saw injury in Rajkumari's jaw on the day of the incident. Child witness/ Rajkumari (PW-4) has stated in her statement that her upper tooth was injured due to her mother (accused) hitting her. In this way, it has been revealed that Rajkumari had injury in her jaw and teeth during the incident.
21. The next question is that the appellant have been convicted on testimony of Rajkumari (PW-8), daughter of Devnarayan (PW-2) and appellant Sukwariya Bai. Her testimony has been questioned



by the learned counsel for the appellant on the ground that testimony of child witness should not be relied upon to base conviction unless it is corroborated by other appropriate valid piece of evidence as she is tutored witness.

22. In order to answer the question, it would be appropriate to notice the provisions contained in Section 118 of the Evidence Act, which states as under:-

“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.”

23. Before discussing the evidence of the child witness, it would be advantageous to refer to the law relating to child witness. Section 118 of the Evidence Act deals with the question of competency of persons to testify. Under this section, all persons are competent to testify, unless they are, in the opinion of the Court, (a) unable to understand the questions put to them, or (b) to give rational answers to those questions, owing to (i) tender years, (ii) extreme old age, (iii) disease of mind or body, or (iv) any other such cause. Even a lunatic, if he is capable of understanding the questions put to him and giving rational answers, is a competent witness. With respect to children, no precise age is fixed by law within which they are absolutely excluded from giving evidence on the presumption that they have not sufficient understanding. A child is not an incompetent witness by reason of its age. A child of tender



years is not, by reason of its youth, as matter of law, disqualified as a witness. There is no precise age which determines the question of competency. According to Section 118 of the Evidence Act, a child of tender age is a competent witness if it appears that it can understand the questions put to it and give rational answers thereto. This section vests in the Court the discretion to decide whether an infant is or is not disqualified to be a witness by reason of understanding or lack of understanding. When a young child is a witness, the first step for the Judge or Magistrate to take is to satisfy himself that the child is the competent witness within the meaning of Section 118 of the Evidence Act and for this purpose, preliminary inquiry should be held. It is the duty of the Court to ascertain in the best way, which it can, whether from the extent of his intellectual capacity and understanding the child witness is able to give a rational account of what he has seen, heard or done at a particular occasion or in other words, the witness understands the duty of speaking truth or not. Competency of young children can be ascertained by putting a few questions to them in order to find out whether they are intelligent enough to understand what they had seen and afterwards inform the court thereof. The holding of a preliminary inquiry is merely a rule of prudence and is not a legal obligation upon the judge. It is desirable that after holding a preliminary inquiry, Judges and Magistrates maintain record incorporating opinion that the child understands the duty of speaking truth.



Though no precise criteria for appraising the evidence of a child witness can be laid down, yet one broad test is whether there was possibility of any tutoring. If this test is found in positive, the Court will not, as a rule of prudence, convict the accused of a major offence on the basis of child evidence unless it is corroborated to material extent in material particulars, directly connecting the accused with the crime. At the same time, if otherwise the testimony of a child witness is not shown to be tainted with any such infirmities, it calls for due credence. A child in the innocent purity of its mind and unsophistication is more likely to come forth with version which is unbiased, unsoiled, natural and forthright. It is less prone to manipulation, motivation and spirit of vendetta. It can as well be spontaneous and inspiring, once the child is enabled to overcome the initial shock and awe, and ensured protection, security, compassion and given confidence to come out with what was seen. Further, some of the children are fairly intelligent, truthful and straight forward, and there is no reason to start with a presumption of untrustworthiness in the assessment of their evidence. The merit of evidence has to be judged on the touchstone of its own inherent intrinsic worth.

24. In the matter of **Panchhi v. State of UP**² the Supreme Court has held as under:-

“.....It cannot be said that the evidence of a child witness would always stand irretrievably stigmatized. It is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable. The law is that

2 (1998) 7 SCC 177



evidence of a child witness must be evaluated more carefully with greater circumspection because a child is susceptible to be swayed by what others tell him and thus a child witness is an easy prey to tutoring.”

25. With regard to the testimony of child witness the Supreme Court in **State of Karnataka v. Shantappa Madivalappa Galapuji & others**³ had noticed the case law and held as under:

*“The Indian Evidence Act, 1872 does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that 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 these questions, because of tender years, extreme old age, disease -- whether of mind, or any other cause of the same kind. A child of tender age can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto. The evidence of a child witness is not required to be rejected per se, but the court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon. {See **Suryanarayana v. State of Karnataka (2001) 9 SCC 129**}. In **Dattu Ramrao Sakhare v. State of Maharashtra [(1997) 5 SCC 341]** it was held as follows : (SCC p.343, para 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

3 (2009) 12 SCC 731



be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to given 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.”

26. The position of law relating to the evidence of a child witness has been dealt with also by the Supreme Court in **Nivrutti Pandurang Kokate and others V. State of Maharashtra**⁴ and **Golla Yelugu Govindu v. State of Andhra Pradesh**⁵. In the case of **State of U.P. Vs. Krishna Master & Others**⁶ the Supreme Court also has gone a step ahead in observing that a child of tender age who has witnessed the gruesome murder of his parents 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 his evidence.
27. Reverting to the facts of the present case in light of principle of law laid down by the Supreme Court noticed hereinabove, in the present case, at the time of recording of the evidence of Rajkumari (PW-8), she was aged about 11 years.

4 2008 (12) SCC 565

5 2008(4) SCALE 569

6 (2010) 47 OCR (SC) 263



28. In para 24 of the trial Court's judgment, Rajkumari (PW-08) who is the daughter of the accused, has stated in her deposition that her mother, accused Sukavariya, had hit her grandmother sleeping on the cot with a crowbar, at the time of the incident, she was also on the cot with the grandmother. The witness had an injury in her upper tooth due to the hitting by the accused and the accused had also hit her grandfather Thakur Prasad with a crowbar, due to which, her grandfather also died. In cross-examination, this child witness has strongly denied the defence's suggestion that Sukavariya had not hit the witness' grandparents and on the day of the incident her grandparents were fighting among themselves. This witness has also clearly denied the defence's suggestion that she is telling about the incident as per her father's telling, rather the witness has clearly stated that no one has taught or explained her to tell anything in the court rather she is telling what she has seen and what she knows. In this way this child witness has given a clear statement about accused Sukavariya hitting Kamla Bai and Thakur Prasad with a crowbar on the day of the incident and has also stated that at the time of the incident she was on the cot with her grandmother and this witness also had an injury on her upper tooth due to the hitting by the accused.
29. J.S. Kanwar Sub-Inspector (PW-16) has stated in his deposition that on receiving information about the incident, a case without numbering was registered and on the same date 20/05/2014. He gave the report of Exhibit P-16 to the Medical Officer of District



Hospital, Baikunthpur for examination of the injury caused to the body of the inmate Rajkumari. Medical Officer Dr. H.S. Shende (PW-13) has stated that on 20/05/2014 itself he examined the injury caused to the inmate Rajkumari and gave the examination report and in his deposition certifying the examination report Exhibit P-16A he has stated that there was a torn wound in the inner membrane of the left side of the upper lip of the inmate Rajkumari whose size was 1/4 x 1/4 cm. There was a lacerated wound on the upper lip from midline on left side measuring 1/4 x 1/4 cm which was slightly swollen, left side lower canine tooth was missing, he advised injured to get it examined by a dentist.

30. K.S. Rathia Inspector (PW-20) in his deposition produced the report Exhibit P-20 and has stated that he has got the injury caused to the jaw of the injured Rajkumari examined by the Medical Officer, Baikunthpur. Medical Officer Dr. R.P. Singh (PW-18) has stated that on 08/08/2014 he examined the injuries of Rajkumari and submitted a report and in his deposition, while certifying the report Ex.P-20A, he has stated that the upper and lower milk teeth on the left side of the injured Rajkumari were missing, which appeared to be broken at that time. After this, he had also seen the X-ray report of the injured in which the upper milk tooth on the left side of the injured had come out completely, a piece of the lower milk tooth was stuck in the jaw, according to him the injured had a tooth decay. The injuries sustained by Rajkumari were of a serious nature. In cross-examination, the



above medical officer has rejected the defence's suggestion that the teeth of Rajkumari who were protruding were naturally fallable. In this way, the facts revealed in the testimony of the victim and the above-mentioned independent witnesses regarding the injury caused to the victim are also confirmed on the basis of medical evidence and it is proved that on the day of the incident, serious injury was caused to the jaw of Rajkumari who was injured.

31. Now it is important to see in the case whether the above-mentioned injuries caused to Thakur Prasad, Kamla Bai and Rajkumari were caused intentionally and voluntarily by the accused Sukavariya by hitting them with an iron crowbar on the day of the incident? In this regard, the statements of the examined witnesses are being considered again in detail in relation to the evidence and circumstances available in the case.
32. The complainant Devnarayan (PW-2) who is the son of the deceased and father of Rajkumari, has testified that on the night of the incident, on the call of Lallu and Raghu, when he came to his house from Jagrup Singh Gond's house, he saw Thakur Prasad, Kamla Bai and Rajkumari in an injured state. On enquiring about the incident, his daughter Rajkumari told him that the accused was going from the house with Mahua, then Kamla Bai and Thakur Prasad stopped her. On the same matter, the accused Sukavariya beat Thakur Prasad and Kamala Bai with a crowbar. Rajkumari was also sleeping on the cot with her



grandmother Kamala Bai. Sukavariya also beat her. Sukavariya beat and injured her and ran away from the house. When the complainant came home, his wife Sukavariya was not at home. When the complainant told Ajay and Vijay about the incident, Ajay also told him that Sukavariya came towards his house with an axe and was shouting that she had murdered Shiv Prasad and Kamla Bai.

33. Raghu Pratap (PW-5), who is the nephew of the accused, has stated in his deposition that on the day of the incident, his uncle Devnarayan had gone to Gajrup Singh's house in the morning for a wedding. This witness also went to Gajrup Singh's house at 7:00 p.m. At that time, Devnarayan's grandparents (Thakur Prasad and Kamala Bai), Sukavariya, cousin sister Rajkumari and younger brother Shivpratap were present at his house. When this witness came home from the wedding house with his brother Lallu Pratap at about 9:00 p.m., he saw Kamala Bai, Rajkumari and Thakur Prasad lying injured and covered in blood. His grandmother Kamala Bai told him that daughter-in-law Sukavariya Bai was taking Mahua and when he refused, Sukavariya Bai beat them with a crowbar. In cross-examination, the witness has rejected the defence's suggestion that when he reached the scene of incident, his grandmother had fainted and was unable to talk and that his grandmother had not spoken to this witness. He has also rejected the suggestion that Devnarayan did not want to keep his wife Sukavariya and that there were fights between them



before the incident.

34. Lallu Pratap (PW-7), who is the son of the accused has supported and deposed similar statement to Raghu Pratap (PW-5).
35. Jaipal (PW-3) and Gorelal (PW-4) have also stated in their testimony that Raghu Pratap had told them that Sukavariya Bai had beaten Kamla Bai and Thakur Prasad with a crowbar. Similarly, witness Hari Singh (PW-19) has also stated that he came to know about the incident that Sukavariya Bai had hurt Thakur Prasad and Kamla Bai with a crowbar, due to which Thakur Prasad and Kamla Bai died. Thus, the testimony of these witnesses also affirms the accused causing injury to Thakur Prasad, Kamla Bai and Rajkumari by hitting them with a crowbar.
36. The testimony of the above witnesses reveals the fact that on the day of the incident, the husband of the accused, Devnarayan, had gone to Gajrup Singh Gond's house in the morning to work in a marriage function and in the evening, the son of the accused, Lallu Pratap and nephew Raghu Pratap also went to Gajrup Singh Gond's house to have dinner. At that time, in Devnarayan's house were his wife Sukavariya (the accused), his parents (the deceased), his daughter Rajkumari and small child Shiv Pratap. When, after some time, Lallu Pratap and Raghu Pratap returned after eating, they saw Thakur Prasad, Kamala Bai and Rajkumari injured and bleeding in the house. At that time, Kamala Bai was in a position to talk, and she told Raghu Pratap and Lallu Pratap that



accused Sukavariya had caused injuries to them by beating them with a crowbar. Child witness/injured Rajkumari (PW-8) present at the place of incident has also clearly stated that accused Sukavariya had caused injuries to all the three by beating them with a crowbar.

37. Not only this, on the memorandum statement of appellant Sukwariya Bai, iron crowbar was recovered on her pointing out, which was sent for FSL and as per FSL report, blood was found on iron crowbar seized from appellant Sukwariya Bai.
38. Investigating Inspector R. Tigga (PW-15) further stated in his deposition that on 20/05/2014, he took accused Sukwariya in custody and recorded his memorandum statement (Ex.P-11) and seized an iron crowbar from the edge of a field along the footpath, ahead of Dubchola market, at the place mentioned by Sukwariya in the memorandum statement, as per seizure sheet (Ex.P-12). Independent witnesses of memorandum and seizure, Shankh Lal (PW-12) and Hari Singh (PW-19) have testified to memorandum statement (Ex.P-11) and seizure sheet (Ex.P-12). While proving this, he has stated in his deposition that when the police took the accused Sukavariya in custody and questioned her in his presence, Sukavariya had told him that the axe used in the incident was thrown in the field of village Dubchola. Thereafter, after some paperwork, the police went to the spot and seized the axe lying in the field and prepared the seizure memo (Ex.P-12).



39. During investigation, after examining the seized iron crowbar, Dr. H.S. Shende (PW-13) has given the query report (Exhibit P-17A), in which the length of the iron crowbar is 77 cm, roundness is 1.5 cm in one part, 6 cm in the middle and 3 cm in the other part and the said crowbar is pointed and sharp. It is also stated that blood-like spots are visible on the sharp part. Regarding the query, the Medical Officer has given his opinion that all the injuries which were found during the post-mortem of Kamla Bai and Thakur Prasad could have been caused by the crowbar which was examined.
40. On the basis of testimony of eyewitness Rajkumari (PW-8) and further on the basis of memorandum statement (Ex.P-11), iron crowbar has been recovered vide Ex.P-12 and it has been subjected to FSL, in which blood was found and as such, the trial Court has rightly convicted the appellant on the basis of the aforesaid incriminating evidence based on testimony of eyewitness Rajkumari (PW-8), memorandum statement and recovery of iron crowbar, in which blood was found, as such, the trial Court is absolutely justified in convicting appellant Sukwariya Bai for offence under Sections 302 and 326 of the IPC. We do not find any merit in this appeal.
41. In the result, this Court comes to the conclusion that the prosecution has succeeded in proving its case beyond all reasonable doubts against the appellant. The conviction and sentence as awarded by the trial court to the appellant is hereby



upheld. The present criminal appeal lacks merit and is accordingly **dismissed**.

42. It is stated at the Bar that the appellant is in jail. She shall serve out the sentence as ordered by the trial Court.
43. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the Appellant is undergoing the jail term, to serve the same on the Appellant informing her that she is at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

Sd/-

(Ravindra Kumar Agrawal)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice



HEADNOTE

The Evidence of a child witness is not required to be rejected per se, but the court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon.