



2026:AHC-LKO:32170-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD  
LUCKNOW**

**Jail Appeal No. - 212 of 2011**

Dev Bahadur Yadav @ Matru  
Yadav

.....Appellant(s)

Versus

State of U.P.

.....Respondents(s)

Counsel for Appellant(s) : Jail Appeal In Person, Dhananjay Kumar Singh

Counsel for Respondent(s) : A.G.A.

**AFR**

**Court No. – 10**

**Reserved On:** 19.03.2026

**Delivered On:** 04.05.2026

**HON'BLE RAJNISH KUMAR J.  
HON'BLE ZAFEER AHMAD, J.**

***(Per: Hon'ble Zafeer Ahmad)***

1. Heard, Sri Dhananjay Kumar Singh, learned Amicus Curiae for the appellant and Sri Pawan Kumar Mishra, learned AGA for the State. Perused the records.
2. The aforesaid jail appeal arises out of judgment and order dated 27.10.2010 passed by the Additional Sessions Judge/Special Judge, Pratapgarh in S.T. No. 248 of 2009 (*State v. Dev Bahadur @ Matru Yadav*), arising out of case crime no. 62 of 2009, Police Station Antu, Sub-District Sadar, District Pratapgarh, whereby the appellant has been convicted under Section 302 of Indian Penal Code, 1860 (in short I.P.C.) for life imprisonment along with a fine of Rs. 20,000/ and in case of non-payment of fine, an additional imprisonment of six months.

**Prosecution Story in Nutshell:**

3. The prosecution story, in brief, is that on 27.03.2009, complainant Ram Bodh Yadav, s/o Sukhai Yadav, r/o village Shukulpur, Police Station Antu, District Pratapgarh submitted a written report stating therein that his daughter, Sunita, was married to Dev Bahadur @ Matru, s/o Nanda Yadav, r/o village Babu Ka Purwa Majra Umri, Police Station Antu, around fifteen years ago. On 27.03.2009 he received an information over telephone that his daughter, Sunita, had been murdered by her husband, Dev Bahadur @ Matru, with an axe at around 6:00 AM. On receiving such information he came to village Babu ka Purwa Majra Umri and saw that his daughter's body was lying on a cot under a thatched roof.
4. On the basis of the written report, an F.I.R was registered under Section 302 I.P.C against the accused, Dev Bahadur @ Matru. The investigation of the case was entrusted to S.I. Upendra Yadav, who proceeded to the place of occurrence on the same day and conducted the inquest proceedings.
5. Upon completion of investigation, charge-sheet was submitted against the accused-appellant under Section 302 I.P.C. Thereafter, the case was committed to the Court of Session, where charge under Section 302 IPC was framed against the accused. The accused denied the charge, pleaded not guilty, and claimed trial.
6. In order to prove its case, the prosecution examined Ram Bodh Yadav (PW-1), Shalu(PW-2), Dr. Alok Shukla (PW-3), Constable Raj Bahadur Yadav (PW-4), Constable Gaya Prasad Patel (PW-5), and S.I. Upendra Yadav (PW-6).
7. Besides the aforesaid witnesses, the Trial Court, in exercise of its powers, examined S.I. Jai Shankar Ram as Court Witness (CW-1). The defence, however, did not adduce any oral or documentary evidence in support of its case.

8. The following exhibits were produced and proved before the Trial Court:

| EXHIBIT NUMBER | PARTICULARS                                                                                                                                                        |
|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ext Ka-1       | Written Report                                                                                                                                                     |
| Ext Ka-2       | Post-mortem Report                                                                                                                                                 |
| Ext Ka-3       | FIR                                                                                                                                                                |
| Ext Ka-4       | Carbon Copy of GD and FIR                                                                                                                                          |
| Ext Ka-5       | Panchayatnama                                                                                                                                                      |
| Ext Ka-6       | Sketch of dead body                                                                                                                                                |
| Ext Ka-7       | Police Form No. 13                                                                                                                                                 |
| Ext Ka-8       | Letter to RI                                                                                                                                                       |
| Ext Ka-9       | Letter to CMO                                                                                                                                                      |
| Ext. Ka-10     | Sample Seal                                                                                                                                                        |
| Ext. Ka-11     | Site plan of the place of occurrence                                                                                                                               |
| Ext. Ka-12     | Recovery memo of axe                                                                                                                                               |
| Ext. Ka-13     | Site plan of recovery of axe                                                                                                                                       |
| Ext. Ka-14     | Recovery memo blood-stained earth, pieces of bangles of the deceased, blood stained woven cot, blood stained pieces of bed                                         |
| Ext. Ka-15     | Letter sent to the Forensic Science Laboratory, Lucknow for examination of clothes of the deceased, axe, blood-stained and plain earth, bedding and piece of a cot |
| Ext. Ka-16     | Charge-sheet                                                                                                                                                       |
| Ext. Ka-17     | Forensic examination report                                                                                                                                        |

9. The following material exhibits were produced and proved before the Trial Court:

| EXHIBITS NUMBER        | ITEM/DESCRIPTION                                                  |
|------------------------|-------------------------------------------------------------------|
| Material Exhibit-1     | Sealed cloth containing axe, three sealed boxes and sealed bundle |
| Material Exhibit-2     | Axe                                                               |
| Material Exhibit-3     | Cloth used for sealing an axe                                     |
| Material Exhibit-4     | Sample of plain earth                                             |
| Material Exhibit-5 & 6 | Two sealed envelope                                               |
| Material Exhibit-7     | Sealed box                                                        |
| Material Exhibit-8     | Bloodstained bedding                                              |
| Material Exhibit-9     | Bloodstained binding of cot                                       |
| Material Exhibit-10    | Piece of saree                                                    |
| Material Exhibit-11    | Piece of petticoat                                                |
| Material Exhibit-12    | Piece of blouse                                                   |

|                           |                       |
|---------------------------|-----------------------|
| Material Exhibit-13 to 16 | Sealed Envelope       |
| Material Exhibit-17       | Yellow metal ring     |
| Material Exhibit-18 & 19  | White metal anklet    |
| Material Exhibit-20 & 21  | Yellow metal ear tops |
| Material Exhibit 22       | Yellow metal nose pin |

10. The statement of the accused–appellant was recorded under Section 313 Cr.P.C., wherein he denied that he had ever been previously arrested in connection with any complaint lodged by the deceased, and that his arrest in present case and the recovery of the weapon were fabricated and wrong. He refused to have given any confessional statement to the police and alleged that the recovery of the T- shirt was also fabricated. He further stated that the FIR and GD are ante-timed and that the witnesses have given false testimony to frame him. The statement of the accused–appellant was recorded under Section 313 Cr.P.C., wherein he stated that he was not previously arrested on the basis of the complaint of the deceased and that his arrest and the recovery of the weapon were fabricated and wrong. He refused to have given any confessional statement to the police and alleged that the recovery of the T-shirt was fake. He further stated that the FIR and GD are ante-timed and that the witnesses have given false testimony to frame him.

**Submissions made by learned counsel for the accused-appellant:-**

11. Learned counsel for the accused-appellant submitted that the prosecution case is wholly unreliable and suffers from material contradictions, inasmuch as the FIR is ante-timed and appears to be concocted, which is evident from the inconsistencies in the prosecution timeline. It is further submitted that PW-2 Shalu, who is projected as the sole eyewitness, finds no mention in the FIR, and PW-1 has

admitted that he did not disclose her name at the time of lodging the report, thereby casting serious doubt on her presence. Learned counsel further submitted that the occurrence took place in the course of a sudden quarrel between husband and wife, without any premeditation, and the act was committed in the heat of passion without the accused having taken undue advantage or having acted in a cruel or unusual manner; thus, no offence under Section 302 I.P.C. is made out and, at the highest, the case would fall within Exception 4 to Section 300 I.P.C., attracting Section 304 Part II I.P.C., there being no intention to cause death.

**Submissions made by learned A.G.A : -**

12. Per contra, learned A.G.A. submitted that the prosecution case is fully supported by the evidence on record and the conviction recorded by the trial court is well-founded. It is contended that the testimony of PW-2 Shalu is reliable and inspires confidence, and merely because her name was not mentioned in the FIR would not render her evidence unreliable. It is further submitted that the FIR cannot be said to be ante-timed and the alleged discrepancies are minor in nature. It is further submitted that the nature of injuries, particularly on vital parts of the body, clearly establishes intention to cause death and, therefore, the case squarely falls within the ambit of Section 302 I.P.C. and no case for conversion to Section 304 I.P.C. is made out.

**Oral Testimonies:**

In order to appreciate the issues arising in the present appeal, it is appropriate to examine, in brief, the oral evidence adduced by the prosecution.

13. **PW-01 Rambodh Yadav**, deposed that the incident took place on 27.03.2009 at about 6:00 A.M. He further deposed that he received information by telephone

that his son-in-law, Dev Bahadur alias Matru Yadav, had killed his daughter, Sunita (deceased), by hitting her with an axe (*kulhadi*). He further deposed that upon receiving such information, he reached the house of his daughter and saw that her dead body was lying on a cot under a thatched roof (*chhappar*). He further deposed that he had performed the marriage of his daughter, Sunita, with the accused, Dev Bahadur. He further deposed that his daughter had three children from the accused and the eldest daughter Shalu was about 12 years of age. He further deposed that middle son is Kallu and youngest one is Bachha. He further deposed that his son-in-law was addicted to intoxicants and used to beat his daughter after consuming liquor. He further deposed that his daughter used to persuade the accused to give up his addiction, but he did not agree. He further deposed that due to such conduct, his daughter had earlier filed a case against the accused and he was sent to jail, but even after his release, there was no improvement in his behaviour. He further deposed that due to his bad habits, the father of the accused had separated him from the family about five years prior to the incident. He further deposed that the accused had cut and sold a Mahua tree situated in front of the house and had spent the money on his addiction. He further deposed that his daughter used to oppose such conduct and due to this dispute, the accused killed her by assaulting her with an axe. He further deposed that he got the report written through a village Thakur and after reading the same, submitted it at the police station, proving it Ext. Ka-1. He further deposed that the police conducted the inquest proceedings at the place where the body was lying and he had signed the same. He further deposed that on the same day at about 2:00 P.M., the police arrested the accused at Antu Railway Station in his presence and there were bloodstains on his T-shirt. He further deposed that the accused confessed

before the police and disclosed about the axe used in the crime, which he had concealed. He further deposed that the accused led the police to his house and recovered the axe from the thatched roof (*chhappar*).

14. **During cross-examination**, he deposed that he was present when father of the accused had separated him (accused) from the family. He further deposed that his house is at a distance of about 4 to 4½ kos (13 to 14.5 Km) from the place of occurrence and he cannot tell the name of the person who informed him by phone. He further deposed that he received the information at about 8:00 A.M. and it took him about one hour to reach the village by motorcycle. He further deposed that when he reached the house of his daughter, the police had already arrived there. He further deposed that it took about 5 to 10 minutes to get the report written and about half an hour to reach the police station, and he reached the police station at about 10:30 to 11:00 A.M. He further deposed that he had informed the Inspector that Shalu had witnessed the incident and had also given her statement, but he (witness) did not mention this fact in the written report. He further deposed that Shalu was present at the place of occurrence and had given her statement to the police. He further deposed that he could not tell the exact size of the axe blade but stated that it was small and fixed on a handle of about 1 to 1½ hands in length. He further deposed that he came to know about the accused beating his daughter about 12–13 years after the marriage and that the deceased had also filed a report regarding such beatings. He further deposed that the thatched roof where the incident took place was about 8 hands long and 4 hands wide and was surrounded by bamboo screens on all sides and there was no wooden door. He further deposed that about 3–4 steps to the north of the place of

occurrence, there was the house of his relative Nanda. He further deposed that the deceased was lying on the cot on her right side, covered with a blood-stained sheet and there was blood on her clothes. He further deposed that when he reached the place of occurrence, the accused was not present there. He further deposed that the Inspector arrested the accused from Antu Railway Station at about 2:00 P.M., but he was not present at the time of arrest. He further deposed that he had not received any telephone call and that relatives from Nevada village had come and informed him about the incident. He further deposed that Nevada village is about 1 km away from his village. He further deposed that he received information about the incident at about 8:00 A.M. and denied the suggestion that the deceased was murdered by some unknown person in the night. He further denied the suggestion that he has falsely implicated the accused at the instance of others or that Shalu had not informed him about the incident.

15. **PW-02 Shalu**, daughter of deceased and accused-appellant, aged about 12 years, was examined before the Trial Court. Before recording her testimony, the Court conducted a preliminary inquiry and she deposed that she was studying in Class 5 in the village primary school and understood the meaning of an incident and oath, and that one must speak the truth and not tell lies. She further deposed that she was able to distinguish between right and wrong. Upon such satisfaction, the Trial Court found her competent to depose and proceeded to record her testimony.

16. **During examination-in-chief**, she deposed that the incident had occurred about one year prior and at about 6:00 A.M., her father assaulted her mother with an axe (*kulhadi*), as result of which she died at home. She further deposed that at the time of the incident, she was warming herself near a bonfire (*kauda/कौड़ा*), while her

parents were quarreling inside the thatched roof (*chhappar*) on account of domestic dispute relating to the conduct of the accused, who used to sell household articles and would not maintain the family. She further deposed that such quarrels were frequent and, on the date of occurrence, during the course of such dispute, the accused struck her mother with an axe on the neck and head. She further deposed that when her parents were arguing, her father scolded her due to which she got frightened and remained standing there. She further deposed that after the occurrence, the accused remained there and thereafter her grandfather and villagers came, caught hold of the accused and tied him to a tree. She identified the accused, who was present before the trial court.

17. **During cross-examination**, she deposed that she was sitting near the bonfire at a short distance from the thatched hut, along with her younger brother Dharmaraj, while her parents were inside. She further deposed that it was early morning and not fully daylight at the time of the incident. She further deposed that her mother was lying on a cot due to illness, when she was assaulted by the accused. She deposed that prior to the incident, partition had taken place between her father and grandfather. On the previous night, they had dinner and went to sleep at about 8:00 P.M. and there was no quarrel between her parents. At the time of the incident, her mother was suffering from fever and was lying on a cot, when the accused assaulted her and she could not save herself. She further deposed that her grandfather and villagers arrived about half an hour after the incident and thereafter the police came, completed the paperwork and took the accused to the police station. She further deposed that she had shown the place of occurrence to the Investigating Officer and informed him that her father had assaulted her mother. She further deposed that after she raised alarm, the accused came out of

the hut and ran towards the drain. At the time of the incident, he was carrying an axe and a knife and assaulted her mother with both, and was wearing jeans and a full-sleeved black *baniyan* (vest). She further deposed that her father had separated from her grandfather and did not maintain the family, and that her grandfather used to support them. She denied the suggestion that her mother was killed by unknown persons or that she had not witnessed the incident or was falsely implicating her father.

18. **P.W-03 Dr. Alok Shukla**, District Hospital, Pratapgarh, deposed that on 27.03.2009 he was posted as a Consultant at the District Hospital, Pratapgarh and at about 3:30 P.M., he conducted the post-mortem examination of the deceased Sunita, aged about 29 years, and proved the post-mortem report (Ext. Ka-2). He further deposed that the death had occurred approximately 12 hours prior to the examination. He further deposed that the following ante-mortem injuries were found on the body of the deceased:

- **Injury No. 1:** Incised wound 3 cm X 2 cm X bone deep, on right side of neck, 4 cm below right angle of mandible; underlying structures are cut.
- **Injury No. 2:** Incised wound 3 cm X 1 cm X muscle deep, on the right side of upper most part of neck, 2 cm below right ear; underlying structures are cut.
- **Injury No. 3:** Incised wound 8 cm X 6 cm X brain deep, on the left side of the occipital region of scalp on the back of the head; underlying structures are cut.

He further deposed that on internal examination, the heart was empty due to excessive blood loss and the cause of death was shock and haemorrhage resulting from ante-mortem injuries.

19. **During cross-examination**, he deposed that the time of death could be around 3:30 A.M. with a variation of 2–3 hours. He further deposed that the injuries could have been caused by a sharp-edged weapon, which may include an axe or a

knife. He further deposed that all injuries could have been caused by a single weapon, though it was also possible that different injuries were caused by different sharp-edged weapons. He further deposed that he had not been shown the weapon of offence and could not give any specific opinion in that regard.

**20. PW-04 Raj Bahadur Yadav**, Constable, deposed that on 27/3/2009, he was posted as Constable in Antu Police Station and on the same day, at around 8:10 A.M., on the basis of the written report of the complainant, Shri Ram Bodh Yadav, a cognizable offence had been disclosed and under check no. 37, crime no. 62/09, a case under Section 302 of the I.P.C was registered against accused-appellant, Dev Bahadur. He proved that the Check Paper is in his handwriting and signature (Ext. Ka-3).

**21. During the cross-examination**, he deposed that when the complainant arrived between 8:00 -10:00 A.M., he immediately registered the FIR. He denied the suggestion that complainant went to the police station at around 11:00-12:00 A.M. to get the FIR register and that check FIR was anti-timed.

**22. PW-05 Gaya Prasad Patel**, Constable, deposed that on 27.3.2009 he was posted as Constable in Antu Police Station. He further deposed that he recorded the details of the proceedings in case crime no. 62/09 registered by him and he also proved the entry of the same in the General Diary as Ext. Ka—4.

**23. During Cross-Examination**, he proved that FIR was registered by constable Raj Bahadur. He deposed that after the GD entry was made the IO left for the place of incident. He denied the suggestion that entry in the GD was anti-time.

24. **PW-06 Upendra Yadav**, SHO, Police Station Atnu, District Pratapgarh, deposed that on 27.03.2009 he was posted as Station House Officer and on the same day, on basis of complaint by Rambodh Yadav, Case Crime No. 62/9 under Section 302 of the I.P.C was registered and he took up the investigation. He further deposed that he, along with SI Jai Shankar Rai, immediately proceeded to the place of the occurrence. He verified and proved *panchayatnama* as Ext. Ka-5, which was prepared by SI Jai Shankar Rai at his (witness) instance. He further proved sketch of dead body as Ext. Ka- 6, Police Form 13 as Ext. Ka- 7, letter to RI as Ext. Ka- 8, letter to CMO as Ext. Ka- 9, sample seal as Ext. Ka- 10 and site plan of the incident site as Ext. Ka- 11. He further deposed that after recording the statements of the witnesses, the accused was arrested and admitted to having committed the offence. He further deposed that pursuant to such disclosure, the axe used in the offence was recovered at the instance of the accused, for which recovery memo was prepared and proved as Ext. Ka- 12. He also proved the site plan of place of recovery as Ext. Ka- 13. He further proved the recovery memo of samples of blood stained and plain earth taken from the place of incident, pieces of bangles of the deceased, blood stained woven cot, blood stained pieces of bed as Ext. Ka- 14. He further verified and proved the letter sent to the Forensic Science Laboratory, Lucknow for examination of clothes of the deceased, axe, blood-stained and plain earth, bedding and piece of a cot as Ext. Ka-15. He further proved the charge sheet dated 18.6.2009 as Ext. Ka- 16. He further deposed that the axe sent to the Forensic Science Laboratory was returned after examination in sealed cloth and is produced before the trial court as Material Ext.- 1. Upon opening the sealed cloth before the Trial Court, an axe, three sealed boxes, and a sealed bundle were found. The witness identified the axe as the same, which was recovered at the instance of the accused

and it was as Material Ext.- 2, and cloth used for sealing the axe was marked as Material Ext.-3. Further, when the sealed boxes were open, sample of a plain earth was found in one box which was marked as Material Ext.- 4; from second box, two sealed envelope were found, which were marked as Material Ext.-5 and 6 respectively and box was marked as Material Ext.-7. The envelope marked as Material Ext.-5 contained a piece of bloodstained bedding, which was marked as Material Ext.-8 and the envelope marked as Material Ext.-6 contained a piece of bloodstained rope of cot (खून लगा हुआ चारपाई के बांध का एक टुकड़ा), which was marked as Material Ext.-9. Further when a sealed bundle was opened, a piece of saree, a piece of petticoat, a piece of blouse, and four sealed envelopes were found. The saree was marked as Material Ext.-10, petticoat as Material Ext.-11, pieces of blouse as Material Ext. 12; and the four envelopes were marked as Material Ext.- 13, 14, 15 and 16 respectively. He further deposed that the envelope marked as Material Ext. 13 contained a yellow metal ring, which is marked as Material Ext.17; the envelope marked as Material Ext.-14 contained two white metal anklets (*payal*) which were marked as Material Ext. 18 and 19 respectively; the envelope marked as Material Ext.-15 contained two yellow metal ear tops which were marked as Material Ext. 20 and 21 respectively; and envelope marked as the Material Ext.- 16 contained a yellow metal nose pin, which was marked as Material Ext.- 22. The witness verified the seal and signature of the Director of the Forensic Science Laboratory, Lucknow, on the reports, marked as Ext. Ka- 17.

25. **During Cross-Examination**, he deposed that he measured the handle of the axe, Material Ext.-2, with his own hands which is around 2 balist 5 angul (दो बालिस्त 5 अंगुल) (roughly around 0.5 meters) in length, and when the same was measured

before the trial court, it turned out to be of similar length. He further deposed that the handle of the axe was cracked near the blade and that a wooden piece was attached thereto, though these facts were not mentioned in the recovery memo. He further deposed that while the length of the iron blade was mentioned as about 6 angul (6 अंगुल) (roughly around 0.108–0.12 meters) in the recovery memo, its width was not recorded. He denied the suggestion that the axe was not recovered at the instance of the accused or that the same was planted. He further deposed that the recovery memo of the bloodstained T-shirt of the accused, Ext. Ka-12, was not produced before him in Court and that the said T-shirt was not sent to the Forensic Science Laboratory. He further deposed that at the time of preparing the *panchayatnama*, he had seen and inspected the injuries on body of deceased and the same were recorded accordingly. He further deposed that no knife was recovered during investigation and that PW-2, Shalu, had not stated before him that her father used a knife or that she was warming herself near a fire (कौड़ा) at the time of the incident or that the accused was tied to a tree after the occurrence. He further deposed that the statement of PW-2, Shalu, was recorded on 05.06.2009, whereas the incident occurred on 27.03.2009. He further deposed that though he met Shalu on the date of inquest proceedings, he did not record her statement at that time and only recorded it later as per requirement of investigation. He denied the suggestion that her statement was deliberately delayed or fabricated. He further deposed that he reached the place of occurrence within about half an hour of starting the investigation, though he did not remember whether Ram Bodh accompanied him. He admitted that the timings of commencement and conclusion of investigation were not recorded in the case diary. He denied the suggestion that the FIR was ante-timed or that the recovery memo was fabricated.

He further deposed that at the time of arrest, he did not notice bloodstains on the body of the accused except on his T-shirt and admitted that the T-shirt was not sent for forensic examination. He further deposed that he did not make an investigation regarding prior allegation of beating or earlier criminal proceeding between the parties. He denied the suggestion that the investigation was biased or that the accused was falsely implicated.

26. **During re-chief examination**, he deposed that the *panchayatnama* (Ext. Ka-5) was prepared by by SI Jaishankar Rai at his (witness) instance and that upon examining the body, injuries No.1 and 2 were found on the right side and were recorded accordingly. He further deposed that the sketch of the dead body(Ext. Ka- 6) also reflects injuries on the right side.

27. **During cross-examination**, he deposed that the sketch of the dead body (Ext. Ka-6) and the *panchayatnama* (Ext. Ka-5) were prepared by S.I. Jai Shankar Rai. He denied the suggestion that the injuries were recorded only on the left side or that he was deposing after seeing the post-mortem report. He further deposed that the site plan (Ext. Ka-11) does not show the place where Shalu and her brother were allegedly warming themselves near the fire (कौड़ा).

28. **CW-01 Jaishankar Rai**, deposed that the *panchayatnama* (Ext. Ka-5) was prepared by him on the instructions of SHO Upendra Yadav and that the process of appointing panch witnesses was carried out by the SHO. He further deposed that he noted three injuries found on the body of the deceased at the end of the *panchayatnama* and, on the instructions of the SHO, depicted injuries No. 1 and 2 on the right side. He further deposed that the *panchayatnama* was in his

handwriting. He also verified and proved the sketch of the dead body (Ext. Ka-6) and stated that the injuries were shown on the right side therein.

29. **During cross-examination**, he denied the suggestion that he had recorded the injuries on the left side or that he was deliberately showing them on the right side. He further deposed that he did not remember whether his statement was recorded by the Investigating Officer during investigation. He affirmed that the *panchayatnama* was not signed by him and stated that the SHO was present at the spot throughout the preparation of the *panchayatnama*. He denied the suggestion that he was deposing falsely before the Court.

### **Court Analysis:**

#### **Credibility and Reliability of PW-2 (Child Witness)**

30. The learned counsel for the accused-appellant has vehemently contended that the conviction rests primarily on the testimony of PW-2, who is a minor child of the deceased, therefore, her evidence ought to be discarded being an interested witness and susceptible to tutoring. It is crystal clear that the entire case of the prosecution is based on the sole testimony of PW-2, Shalu. This Court is unable to accept the said contention in its entirety.

31. The above-mentioned arguments of the learned counsel for the appellant deserves to be appreciated in the light of the settled legal position. Section 118 of the Indian Evidence Act, 1872 provides that all persons shall be competent to testify unless the Court considers that they are incapable of understanding the questions or giving rational answers by reason of tender years or other similar causes. In the present case, the competency of PW-2 was duly tested by the Trial Court before recording her testimony and she was found capable of understanding the questions and giving rational answers. Thus, her testimony is admissible in evidence.

32. The law relating to appreciation of evidence of a child witness is well settled. It is not a rule of criminal jurisprudence that the testimony of a child witness is inherently unreliable or liable to be discarded merely on account of age. However, as a rule of prudence, such evidence requires careful and cautious scrutiny, as a child witness is susceptible to tutoring and impressionable influence.

33. In *Pramila v. State of U.P.*, (2021) 12 SCC 550, Hon'ble Supreme Court has held that even the sole testimony of a child witness can form the basis of conviction, provided the Court is satisfied that the possibility of tutoring is ruled out. The Supreme Court emphasized in paragraph 5 of the case as under:

*“5. ...where a child witness is to be considered, and more so when he is the sole witness, a heightened level of scrutiny is called for... The Court has, therefore, to satisfy itself that all possibilities of tutoring or otherwise are ruled out and what was deposed was nothing but the truth”*

34. Applying the aforesaid principles to the facts of the present case, it is evident that PW-2 is a natural witness being the daughter of the deceased and residing in the same house where the incident took place. Her presence at the place of occurrence is natural and probable. The core of her testimony, namely, that the accused assaulted the deceased with a sharp-edged weapon, remains consistent and finds corroboration from the medical evidence.

35. At the same time, certain infirmities cannot be ignored. PW-2 was not named as an eyewitness in the FIR and her statement under Section 161 Cr.P.C. was recorded with considerable delay. Further, some improvements are noticeable in her testimony with regard to the manner of occurrence and surrounding circumstances, which are not fully supported by the investigation.

36. However, these infirmities do not go to the root of the prosecution case so as to render her entire testimony unreliable. It is a settled principle of criminal

jurisprudence that the doctrine of *falsus in uno, falsus in omnibus* is not applicable in India, and the Court is required to separate the grain from the chaff. Even if a part of the testimony is found to be unreliable, the Court can rely upon the credible portion of the evidence.

37. Accordingly, this Court finds that the testimony of PW-2 is reliable to the extent that it establishes the presence of the accused and his involvement in causing injuries to the deceased. However, the inconsistencies and improvements do create some doubt regarding the precise manner of occurrence, which assumes significance while determining the nature of offence.

#### **Non-examination of Material Witnesses**

38. Learned counsel for the accused-appellant has further contended that the prosecution has failed to examine several material witnesses, including the scribe of the written report, certain panch witnesses, and other witnesses named in the charge-sheet, and therefore the prosecution case is liable to be disbelieved.

39. The said contention cannot be accepted as; it is well settled that the prosecution is not bound to examine each and every witness cited in the charge-sheet. Under Section 134 of the Indian Evidence Act, no particular number of witnesses are required to prove a fact, and it is the quality of evidence and not the quantity, which is material. The Hon'ble Supreme Court, in ***State of U.P. v. Anil Singh, (1988) 3 SCC 686***, has held that it is not necessary for the prosecution to examine all witnesses and non-examination of some witnesses is not a ground to reject the prosecution case, if the evidence of the witnesses examined is found to be reliable. In the present case, the witnesses examined by the prosecution are found to be cogent and trustworthy, and no prejudice has been shown to have been caused to

the accused by non-examination of the scribe or *panch* witnesses. Therefore, such omission is not fatal to the prosecution case.

40. In the present case, the prosecution has examined the material witnesses, including PW-2 (eyewitness), PW-3 (doctor) and PW-6 (Investigating Officer). The core prosecution story stands supported by their testimonies. No specific prejudice has been demonstrated by the defence on account of non-examination of the scribe or certain *panch* witnesses.

41. Furthermore, while appreciating the evidence of a rustic village lady, villager or a child witness hailing from a rural background, the Court must bear in mind the background from which such witness comes, their mental state and age at the time of the incident, and the time gap between the occurrence and the recording of their evidence before the Court. The Court must also consider to what extent such witness is capable of understanding and answering the questions put to them during cross-examination.

42. It is a matter of common experience that there is a marked and considerable variation in the level of understanding amongst people from different backgrounds. The intellect of an educated person living in a city differs from that of a person of the same age group living in a village. Generally, people living in rural areas are comparatively simple and less complex in their expression than those from urban settings.

43. In the present case, PW-2 is a girl of tender age of about 12 years, whose mother was done to death by her own father in her presence. The mental condition and agony which she must have faced can be easily understood. The learned counsel for the appellant has questioned and assailed the testimony of PW-2 on the ground of her being tutored, but has failed to indicate any material from which it can even

remotely be inferred that she was tutored. In fact, there is no iota of evidence which can be termed as '*tutoring*'.

44. It is also important to consider as to why a minor girl would depose falsely against her own father and what benefit she would derive from such false implication. The learned Trial Court, after careful evaluation and appreciation of the entire evidence on record, has found the testimony of PW-2 to be reliable, which finding does not call for outright rejection, though it requires cautious scrutiny in light of the surrounding circumstances.

**Ocular Evidence vis-à-vis Medical Evidence:**

45. Learned counsel for the accused-appellant further submits that there exists inconsistency between the ocular version and the medical evidence on record. It is a settled principle of criminal jurisprudence that where the ocular evidence is credible and trustworthy, minor inconsistencies with medical evidence do not render the prosecution case doubtful. However, where the medical evidence probalizes an alternative version or creates doubt regarding the manner of occurrence, the Court must carefully reconcile the two and extend benefit to the accused on the question of nature of offence.

46. In the present case, PW-2 has deposed that the accused assaulted the deceased with a sharp-edged weapon, namely an axe, and in her deposition has further introduced the use of a knife. However, this part of her testimony does not find support from the investigation and evidence of post-mortem doctor (PW-6), as PW-6 has categorically deposed that no knife was recovered and such fact was not stated by PW-2 during investigation. Thus, to that extent, her testimony is clearly an improvement and cannot be relied upon.

47. The medical evidence, as proved by PW-3, shows that the deceased sustained three incised wounds on vital parts of the body, particularly on the neck and occipital region of the head, with injury No. 1 being bone deep and involving cutting of internal structures of the neck. The cause of death has been opined to be shock and hemorrhage as a result of ante-mortem injuries. The doctor has further clarified in cross-examination that all the injuries could have been caused by a single sharp-edged weapon and that even injury No. 3, which is deeper, could be the result of application of greater force by the same weapon.

48. Thus, the medical evidence clearly establishes that the death was homicidal and caused by a sharp-edged weapon. It also substantially corroborates the core of the ocular testimony that the accused inflicted injuries upon the deceased.

**FIR is ante-timed and concocted**

49. The submission of the learned counsel for the accused-appellant that the FIR is ante-timed deserves consideration in light of certain inconsistencies appearing on record.

50. From the testimony of PW-1, it emerges that he received information at about 8:00 A.M. and reached the police station at around 10:30–11:00 A.M., whereas the FIR is shown to have been lodged at 8:10 A.M. This discrepancy creates doubt regarding the exact time and manner of lodging of the FIR. Further, PW-1 has given inconsistent versions regarding the source of information and has admitted that when he reached the place of occurrence, the police had already arrived there.

51. These circumstances indicate that the prosecution version regarding prompt lodging of the FIR is not free from doubt and suggests possibility of some delay or embellishment.

52. However, it is well settled that merely because the FIR is suspected to be ante-timed, the entire prosecution case cannot be discarded if the core of the prosecution case is otherwise proved by reliable evidence. In the present case, the homicidal death of the deceased stands established and the ocular testimony of PW-2 finds support from medical evidence.

53. Accordingly, while the FIR suffers from certain infirmities, the same is not sufficient to discard the entire prosecution case, but calls for cautious appreciation of the evidence.

**Absence of Motive and Plea of Sudden Act:**

54. Learned counsel for the accused-appellant has contended that there was no premeditated motive to commit the offence and that the occurrence took place in the course of a sudden quarrel between husband and wife, in the heat of passion. Learned counsel for the accused-appellant has placed reliance upon the judgments of *Surinder Kumar v. Union Territory, (1989) 2 SCC 217; Chandigarh, Pundalik v. State of Maharashtra, (2010) 15 SCC 122*; and *Rambir v. State (NCT of Delhi), (2019) 6 SCC 122* to contend that the benefit of Exception 4 to Section 300 IPC ought to be extended and the offence would fall under Section 304 IPC.

55. In *Surinder Kumar* (supra), the Hon'ble Supreme Court has explained that for invoking Exception 4, four conditions must be satisfied, namely: (i) the occurrence must be sudden; (ii) there must be no premeditation; (iii) the act must be done in the heat of passion; and (iv) the offender must not have taken undue advantage or acted in a cruel or unusual manner. Similarly, in *Pundalik* (supra), in the context of a matrimonial dispute, the conviction under Section 302 IPC was altered to Section 304 IPC, where the assault was the result of a sudden quarrel between husband and wife. In *Rambir* (supra), it was held that even use of a weapon picked up at the spur

of the moment during a sudden quarrel would attract Exception 4, provided the act is not barbaric or unusually cruel.

56. Applying the aforesaid principles to the facts of the present case, it emerges from the evidence on record that the accused and the deceased were husband and wife and there existed domestic discord between them. The occurrence took place inside the house and arose out of a quarrel. There is no material on record to suggest any premeditation or prior planning. The weapon used appears to have been picked up at the spot during the course of the incident.

57. Further, though the injuries are on vital parts, the medical evidence does not indicate such excessive or barbaric assault so as to conclusively infer that the accused acted in a cruel or unusual manner or took undue advantage. The act appears to have been committed in the heat of passion upon a sudden quarrel.

58. Thus, the ratio laid down in the aforesaid judgments squarely applies to the facts of the present case. All the essential ingredients of Exception 4 to Section 300 IPC stand satisfied. Accordingly, while the conviction of the accused cannot be sustained under Section 302 IPC, the case would fall within the ambit of Section 304 Part II IPC.

### **Conclusion:**

59. In view of the foregoing discussion and upon a comprehensive re-appreciation of the entire evidence on record, this Court is of the considered opinion that the prosecution has been able to establish beyond reasonable doubt that it was the accused who caused the injuries to the deceased which resulted in her death. The

findings of the learned trial court to this extent, regarding the involvement of the accused, are affirmed.

60. However, this Court finds that the prosecution has not been able to establish the element of intention so as to bring the case within the ambit of Section 300 I.P.C. The evidence on record indicates that the occurrence took place in the course of a sudden quarrel without premeditation. At the same time, considering the nature of the act and the injury caused, the accused can be said to be attributed with the knowledge that such act was likely to cause death.

61. Accordingly, the conviction of the accused, Dev Bahadur, under Section 302 I.P.C. is liable to be altered to one under Section 304 Part II I.P.C.

62. The conviction of the accused-appellant under Section 302 I.P.C., as recorded by the learned trial court, is hereby altered to a conviction under Section 304 Part II I.P.C.

63. Insofar as the sentence is concerned, it is noted that the accused has already undergone incarceration for a period of 18 years, 07 months and 11 days as on 16.12.2025, which exceeds the maximum sentence prescribed under Section 304 Part II I.P.C., i.e., imprisonment for a term which may extend to 10 years.

64. In view of the aforesaid, the period of imprisonment already undergone by the accused is held to be sufficient sentence for the offence under Section 304 Part II I.P.C. The sentence of fine, imposed by the trial court, is maintained. However, in case the fine has already been deposited, no further order is required; and in case of default sentence, it is observed that the accused has already undergone incarceration exceeding even the maximum prescribed term.

65. The appeal, therefore, stands **partly allowed**.

66. The accused-appellant is directed to be released forthwith, if not required in any other case.

67. Pending applications, if any, shall stand disposed of.

68. Let a certified copy of this judgment along with the lower court record be transmitted to the court concerned forthwith, and in any case within a period of one week, for compliance.

**(Zafeer Ahmad, J.) (Rajnish Kumar, J.)**

**May 4, 2026**  
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