CASE NO.:
Appeal (crl.) 522 of 1999

PETITIONER:
SURYANARAYANA

RESPONDENT:
STATE OF KARNATAKA

DATE OF JUDGMENT: 03/01/2001

BENCH:
K.T. THOMAS & R.P. SETHI

JUDGMENT:
JUDGMENT

2001 (1) SCR 1

The Judgment of the Court was delivered by

SETHI, J. Ms. Saroja, deceased had developed intimacy and extra marital relations with the appellant, as a result of which she gave birth to a male child. After the birth of the child differences arose between the appellant and the deceased. The appellant started suspecting the deceased of having illegal connections with other persons. She was subjected to cruelty and harasment. Unable to bear the cruelty of the appellant, the deceased left the residence of the appellant 8 days prior to her death and started living in the house of his brother Ravi (PW1). On 22nd September, 1993 the deceased accompanied by Bhavya (PW2), the female child of Ravi (PW1), who was about four years of age, went to the village tank in the afternoon for washing the clothes. While she was washing clothes, the appellant came an stabbed Saroja with knife inflicting injuries on her neck, chest and other parts of the body causing severe bleeding resulting in her death. Immediately the child Bhavya (PW2) rushed to the house and informed her parents about the occurrence specifically mentioning that the appellant had stabbed the deceased.

On the complaint of Ravi (PW1) FIR was registered against the appellant and investigation commenced. The Tehsildar P.M. Krishnappa (PW14) prepared the inquest mahazar on the dead body of the deceased and in that process recorded the statement of Bhavya (PW2). She is stated to have made the deposition in Malyalam which was translated to the Investigating Officer in Kannada. During the course of the investigation the appellant made voluntary statement Exhibit p. 13. In consequence of the disclosure statement made by the appellant, the knife (MO1), shirt (MO5), Lungi (MO6) and Towel (MO7) were recovered at the instance of the accused from his house. After completion of the investigation a charge-sheet was submitted before the Judicial Magistrate who committed the accused to the Sessions Court for standing trial for offences under Section 302 of the IPC. The prosecution examined 16 witnesses. Upon the conclusion of he trial the Sessions Judge found the appellant guilty of the commission of offence under Section 302 IPC and sentenced him to undergo imprisonment for life besides paying a fine of Rs. 1000. In default of the payment of the fine the appellant was directed to undergo further imprisonment of 30 days. The appeal filed by the appellant was dismissed by the High Court vide the judgment impugned in this appeal by special leave. Before appreciating the rival contentions addressed at the Bar, it has to be noticed that the whole of the prosecution case is mainly based upon the statement of child witness Bhavya (PW2). The witness was related both to the accused and the deceased. Shardamma (PW3) is the sister of PW1 and wife of the appellant. Deceased Saroja and Smt. Nalini are the other sisters of Ravi (PW1). Bhavya (PW2) is the daughter of PW1. The deceased was not married and was earlier residing with her parents who died about 4 or 5 years before the date of occurrence. After the death of her parents the deceased started residing in the house

of her sister Nalini. For some time she also resided with her brother Ravi (PW1). While deceased was residing in the house of her sister Nalini, the accused took her to his house where they developed intimacy as a result of which a male child was born to the deceased.

Both the courts below have concurrently held that deceased Saroja met with homicidal death on 22nd September, 1993 at about 2.00 p.m. near Keremane water tank of Village Kanoor. Relying upon the testimony of PW2 it has been held that he appellant had inflicted the fatal blows on the body of the deceased which resulted in her death. The relationship of the witnesses and the illicit relations between the appellant and the deceased have not seriously been disputed by the learned counsel who appeared on behalf of the appellant as Amicus Curaie. She has, however, stated that it would not be safe to base conviction on the sole testimony of the child witness. She has also pointed out to certain discrepancies in the depositions of the said witness to impress upon us that the prosecution has not proved the case against the appellant beyond all reasonable doubt. Relying upon the defence evidence led in the case it has been argued that as the relationship between the deceased and his wife were cordial, there was no cause or occasion for the appellate to develop intimacy with the deceased and on alleged breaking of the relationship cause her death. It is to be noticed that Shardamma, sister of the deceased who was initially cited as a prosecution appeared as Defence witness (DW1) besides appellant (DW2) himself.

Admittedly, Bhavya (PW2), who was at the time of occurrence was about four years of age, is the only solitary eye-witness who was rightly not given the oath. The time and place of the occurrence and the attending circumstances of the case suggest no possibility of there being any other person as an eye-witness. The evidence of the child witness cannot be rejected per se, but the court, as rule of prudence, is required to consider such evidence with close scrutiny and only on being convinced about the quality of the statements and its reliability, base conviction by accepting the statement of the child witness. The witness of PW2 cannot be discarded only on the ground of her being of Teen age. The fact of being PW2 a child witness would require the court to scrutinise her evidence with care and caution. If she is shown to have stood the test of cross-examination and there is no infirmity in her evidence, the prosecution can rightly claim a conviction based upon her testimony alone. Corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. Some discrepancies in the statement of a child witness cannot be made the basis for discarding the testimony. Discrepancies in the deposition, if not in material particulars, would lend credence to the testimony of a child witness who, under the normal circumstances, would like to mix up what the witness saw with what he or she is likely to imagine to have seen. While appreciating the evidence of the child witness, the courts are required to rule out the possibility of the child being tutored. In the absence of any allegation regarding tutoring or using the child witness for ulterior purposes of the prosecution, the courts have no option but to rely upon the confidence inspiring testimony of such witness for the purposes of holding the accused guilty or not.

This Court in Panchhi & Ors. v. State of U.P., [1998] 7 SCC 177, held that the evidence of the chile witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus an easy prey to tutoring. The evidence of the child witness must find adequate corroboration before it is relied upon as the rule of corroboration is of practical wisdom than of law (vide Prakash v. State of M.P.,[992] 4 SCC 225, Baby Kandayanathi v. State of Kerala, [1993] Supp. 3 SCC 667. Raja Ram Yadav v. State of Bihar, [1996] 9 SCC 287; Dattu Ramrao Sakhare v. State of Maharashtra, [1997] 5 SCC 341.

To the same effect is the judgment in State of U.P. v. Ashok Dixit & Anr. [2000] 3 SCC 70.

In this case Bhavya (PW2) when appeared before the trial court was of 6 years of age. After questioning the witness, the Sessions Judge found, "though the girl is 6 years old she is active and she understands everything". Without administering the oath to the witness her statement was recorded wherein she stated:

"I know Saroja, I call her as Ammayi, she is my aunt. The person sitting in the court Box is my uncle. His name is Suryanarayana. Since I call him as uncle, he is my uncle. My aunt Saroja is now dead. I know how she died several days back after taking lunch My Ammayi i.e. my aunt Saroja and myself went to lake to wash the clothes and to take bath. On that day, my uncle Suryanarayana sitting in the court pierced with knife to stomach and neck to my ammayi. Hence she suffered injuries and her entire body covered with blood. My ammaye while running after injuries fall down, I screamed. Immediately I ran and told my father and mother that uncle killed the aunt. If the knife is shown I can identify (a white cloth bag sealed was opened), I have seen a knife now. In the same knife that day my uncle pierced my Ammaye this was marked as Ex.P-0 on that day police asked me as to what happened, I have told every thing to police."

In her cross-examination the witness stated that before the date of occurrence the deceased was living with her (witness) parents. At the time of occurrence the witness used to go to Aaganwadi School. The witness denied the suggestion that she had not gone with the deceased to wash the clothes. Nothing favouring the defence could be extracted out of her in the cross-examination. She denied the suggestion that "my uncle did not pierce my aunt with the knife. It is not correct that I have not seen the knife on the hands of my uncle". The trial court as well as the High Court accepted her testimony as no inherent defect was pointed out by the defence. We also find no reason to take a country view. The mere fact that her mother had told that she did not know any other language except Malyalam and that the words spoken to by her were not in that language cannot be used as a ground to reject her testimony. The child and her parents conversed in Malyalam language at their residence which has explained to the Investigating Officer in the language which has understood by him. There is no ground of doubting the veracity of the testimony of this child witness as we find that her name is mentioned in the FIR which is proved to have been recorded immediately after the occurrence. PH Krishnappa, the Tehsildar who prepared the inquest report is also proved to have recorded the statement of this child witness wherein she is shown to have made similar disposition. Otherwise also there is sufficient corroboration on record to rule out the possibility of PW2 being tutored or used for ulterior purposes by some alleged interested persons. In the absence of any inherent, defect we do not find any substance in the plea to reject the testimony of this child witness. The statement of PW2 shows that the deceased and the appellant were living together as husband and wife and she used to address them uncle and aunt. Her testimony to the effect of deceased living with Pw1 is sufficiently corroborated by the other evidence led in the case. The factum of deceased having received stabbed wound with knife is proved by the medical evidence. The recovery of the knife at the instance of the appellant in consequence of his disclosure statement leaves no doubt to believe her statement. The place of occurrence being near the water tank has not been seriously disputed. The report received from FSL as per Exhibit P-15 shown that Blouse (MO2), Towel (MO3) and the bangle pieces (MO4) of the deceased and the knife (MO1) which was used in the commission of the crime, the towel (MO7), Lungi (MO6) and shirt (MO5) of the appellant were found to be stained with blood. Dr. Ram Dass (PW12) has opined that the injuries found on the dead body of the deceased could be caused with a weapon like MO1.

On appreciation of evidence in the light of various pronouncements the High Court rightly held:

"The version of PW2 Bhavya is so truthful that it was rightly believed by the court below. The criticism levelled against the evidence of PW2 that

she was tutored etc. are wholly baseless and are unwarranted."

The defence evidence produced in the case also does not weaken any part of the statement of Bhavya' (PW2). No suggestion was made to the witness for allegedly making a false or tutored statement.

Under the circumstances of the case and relying upon the testimony of PW2 which is found to be no suffering from any infirmity and is corroborated in all material particulars, we find no substance in this appeal which is accordingly dismissed upholding the judgment of the trial court and the High Court.