



HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1492 of 2023

Kuldeep Sahu son of Deenmani Sahu, aged about 29 years,
R/o. Village Sarwani, Police Station Baradwar, District :
Janjgir-Champa (CG)

---- Appellant
(In Jail)

Versus

State of Chhattisgarh Through Police Station Baradwar,
District Janjgir-Champa (CG)

---- Respondent

And

Criminal Appeal No.165 of 2024

Sakshi @ Chandni Domar W/o Late Ram Kishore Domar, aged
about 25 years, R/o village Ward No.6, P.S. Baradwar, District
Janjgir-Champa (CG)

---- Appellant
(In Jail)

Versus

State of Chhattisgarh Through the Station House Officer,
Police Station Baradwar, District Janjgir-Champa (CG)

---- Respondent

(Cause title taken from Case Information System)

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| For Appellant: | Mr.Pushpendra Patel, Advocate in CRA No.1492/2023 |
| For Appellant: | Mr.Mahendra Sisodiya, Advocate in CRA No.165/2024 |
| For Respondent/State: | R.S.Marhas, Additional Advocate General |

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Smt.Rajani Dubey, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

8.4.2024





1. Since the aforesaid two criminal appeals have been filed against the impugned judgment dated 4.7.2023 passed by the First Additional Sessions Judge, Sakti, District Janjgir-Champa in Sessions Case No.03/2019, they were clubbed & heard together and are being disposed of by this common judgment.
2. Appellant-Kuldeep Sahu has preferred Criminal Appeal No.1492/2023 under Section 374(2) of the CrPC questioning the impugned judgment dated 4.7.2023 passed by the First Additional Sessions Judge, Sakti, District Janjgir-Champa in Sessions Case No.03/2019, by which he has been convicted for offence under Sections 302/34 and 450 of the IPC and sentenced to undergo imprisonment for life and fine of Rs.1000/-, in default of payment of fine to further undergo RI for one year and RI for three years and fine of Rs.1000/-, in default of payment of fine to further undergo RI for two months.
3. Appellant-Sakshi @ Chandni Domar has preferred Criminal Appeal No.165/2024 under Section 374(2) of the CrPC questioning the impugned judgment dated 4.7.2023 passed by the First Additional Sessions Judge, Sakti, District Janjgir-Champa in Sessions Case No.03/2019, by which she has been convicted for offence under Sections 302/34 and 201 of the IPC and sentenced to undergo imprisonment for life and fine of Rs.1000/-, in default of payment of fine to further undergo RI for one year two months and RI for three years





and fine of Rs.1000/-, in default of payment of fine to further undergo RI for one year two months.

4. The case of the prosecution, in brief, is that the accused / appellant Sakshi @ Chandni Domar lodged the FIR in Baradwar Police Station to the effect that she is was married to Ramkishore Domar in Baradwar and their 4 years old daughter is Samiksha Domar. Her husband Ramkishore Domar was posted as Head Cashier in State Bank of India, Baradwar for last seven years. Her maternal home is near Ward No.10 Kanya Shala in Baradwar and after marriage she lives with her husband on rent in the house of Dinesh Agrawal near Sub-Tahsil office, Baradwar. On 22.09.2018 at about 8 P.M. due to Genesh immersion in her maternal locality, she and her daughter Samiksha had gone to the house of her mother Kiran Teji and her husband was in a rented house, she called her husband on his mobile at about 9.30 P.M., there was no response after several times. When she went to her rented house with her daughter around 11 P.M., the door was locked. The door was bolted from outside. After opening the door, she went inside the house and found that her husband Ramkishore Domar was lying dead on sofa in the hall. Some unknown person murdered her husband by slitting his throat with a sharp object, due to which a lot of blood came tout due to injury on the front of his throat. The palm of the left hand is also injured. Information of the incident was given to her mother Kiran Teji and her sister





Chanda Valmiki through mobile phone and she also told the incident to her brother Chandan Teji. On the basis of report of accused Sakshi @ Chandni, Merg No.49/18 and FIR No.248/2018 for offence under Sections 450 and 302 of the IPC was registered in Baradwar Police Station vide Ex.P-22.

5. During investigation, it was found that accused Kuldeep Sahu was having friendship with deceased Ramkishore Domar for last 5-6 years. Due to friendship, Kuldeep Sahu used to visit Ramkishore's house and used to talk to Ramkishore's wife accused Sakshi @ Chandni Domar. During that time, accused Kuldeep Sahu had established an illicit relationship with Sakshi @ Chandni. Accused Kuldeep Sahu had borrowed money from deceased Ramkishore Domar. When Ramkishore came to know about Kuldeep Sahu's illicit relationship with his wife, Ramkishore demanded money from Kuldeep Sahu and refused to come to his house. Since that time, both Kuldeep and Sakshi @ Chandni Domar were troubled by Ramkishore. Accused Sakshi @ Chandni Domar called the accused Kuldeep Sahu to her house and conspired with him in a well-planned manner and killed her husband Ramkishore Domar by slitting the throat of her husband Ramkishore Domar with a knife. Accused Sakshi @ Chandni by concealing the real facts lodged false report. Inquest was prepared over the body of the deceased vide Ex.P-2. Bedsheet stains with blood was seized vide Ex.P-4. Patwari prepared spot map vide Ex.P-4 (second). Dead body of the deceased was sent





for postmortem to Primary Health Center, Baradwar vide Ex.P-6, where Dr.Pradhan Singh (PW-7) conducted postmortem over the body of the deceased vide Ex.P-7 and found following injuries:-

1. Incised wound with sharp cutting edge present over lateral aspect of left writ joint size 3"x2"x1" with blood clot reddish brown in colour in same site. Fracture radius & ulna lower end detence wound.
2. Incised wound with sharp cutting edge present over left side of just above supra clavicular vertex size 3"x2"x1".
3. Incised wound with sharp cutting edge present over 1 cm above the second wound lateral to nape of size 3"x2"x1".
4. Incised wound with chop wound like sharp & clean cut. Hallow wound two into transverse wound & one vertical.

The doctor has opined that cause of death is injury to the respiratory passage with cut throat injury & excessive internal & external haemorrhage and cause of death was homicidal in nature. Memorandum statement of appellant Kuldeep Sahu was recorded vide Ex.P-14 and on the basis of his memorandum statement, knife was recovered on the pointing out of accused Kuldeep Sahu vide Ex.P-15. Accused Kuldeep Sahu was arrested on 24.09.2018 vide arrest memo



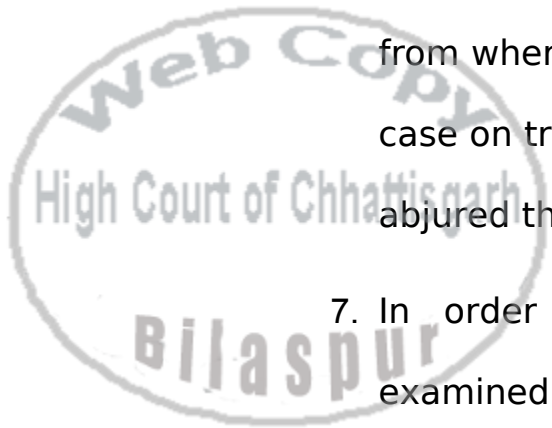


Ex.P-18. Accused Sakshi @ Chandni was arrested on 24.09.2008 vide arrest memo Ex.P-19. Spot map was prepared by the investigating officer vide Ex.P-25. Sofa cover stains with blood, bedsheet stains with blood, knife and lower of deceased Ramkishore Domar stains with blood were sent for examination to FSL vide Ex.P-2 and disintegrated blood was found on knife seized from accused Kuldeep Sahu.

6. After completion of investigation, charge-sheet was filed before the Court of Judicial Magistrate First Class, Sakti who committed the case to the Court of Sessions, Janjgir-Champa, from where the Additional Sessions Judge, Sakti received the case on transfer for trial in accordance with law. The accused abjured the guilt and entered into defence.

7. In order to bring home the offence, the prosecution examined as many as 13 witnesses and exhibited 34 documents Exs.P-1 to P-34. Statements of the accused/appellants were recorded under Section 313 of the CrPC in which they denied guilt.

8. The trial Court upon appreciation of oral and documentary evidence available on record and relying upon testimony of child witness Samiksha (PW-5), convicted appellant-Kuldeep Sahu for offence under Sections 302/34 and 450 of the IPC and appellant-Sakshi @ Chandni Domar for offence under Sections 302/34 and 201 of the IPC and sentenced them as mentioned hereinabove, against which, these criminal appeals have been preferred.





9. Mr. Pushpendra Patel, learned counsel for the appearing for the appellant in CRA No.1492 of 2023 would submit that the judgment of conviction against the appellant is very harsh and not in accordance with law. No offence under Sections 302/34 and 450 of the IPC is made out against the present appellant. The offence against the appellant has not been proved at any corner beyond reasonable doubt. He would further submit that the statement of the witnesses does not help the case of the prosecution, therefore, the appellant ought to have acquitted. The version of the complainant is not supported and corroborated by independent witnesses, hence, her statement is not trustworthy and reliable and there is material contradiction, omissions and improvement in version of the complainant and witnesses. He would also submit that the trial Court has committed grave legal error in convicting the appellant for offence under Sections 302/34 and 450 of the IPC as the prosecution has failed to bring home the offence and child witness Samiksha (PW-5) is not reliable witness and her testimony should not be relied upon unless corroborated by other valid piece of evidence and being daughter, she is interested witness, as such, the judgment of conviction recorded and sentence awarded deserve to be set aside.
10. Mr. Mahendra Sisodiya, learned counsel appearing for the appellant in CRA No.165/2024 would submit that the trial Court has committed grave legal error in relying upon sole



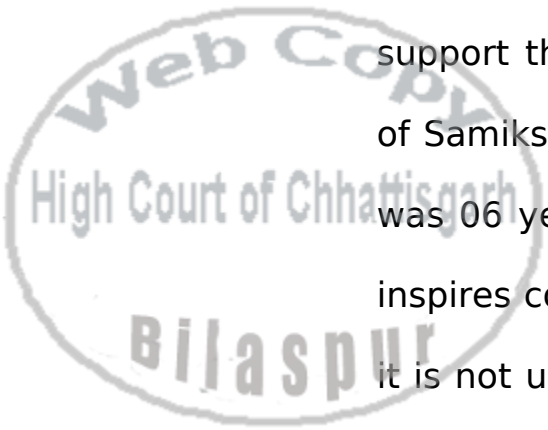


testimony of child witness Samiksha (PW-5) without further corroboration, which is unsafe. In absence of any corroboration, testimony of Samiksha (PW-5) could not have been relied upon. He would further submit that the prosecution has failed to bring home the offence under Sections 302/34 and 201 of the IPC against the present appellant. Therefore, the appeal be allowed and the judgment of the trial Court be set-aside.

11. On the other hand, Mr.R.S.Marhas, learned Additional Advocate General appearing for the respondent/State, would support the impugned judgment and submit that statement of Samiksha (PW-5) is wholly reliable and trustworthy as she was 06 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.

12. We have heard learned appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

1 AIR 1973 SC 55



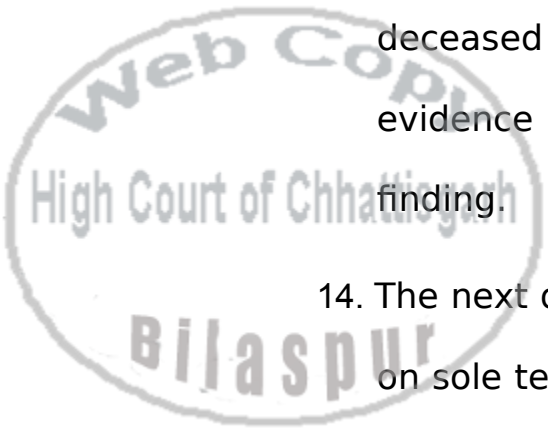


13. The first question for consideration would be, whether death of deceased Ramkishore Domar was homicidal in nature, which the trial Court has recorded to be homicidal in nature based upon testimony of Dr. Pradhan Singh (PW-7), who has conducted postmortem and submitted report vide Ex.P-7, in which he has clearly opined that cause of death is injury to the respiratory passage with cut throat injury & excessive internal & external haemorrhage and death was homicidal in nature. In view of medical evidence available on record, finding recorded by the trial Court that death of the deceased was homicidal in nature is a binding based on evidence available on record. We hereby affirm the said finding.

14. The next question is that the appellants have been convicted on sole testimony of Samiksha (PW-5), daughter of deceased Ramkishore Domar and appellant Sakshi @ Chandni Domar. Her testimony has been questioned by the learned counsel for the appellants on the ground that sole 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.

15. 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:-

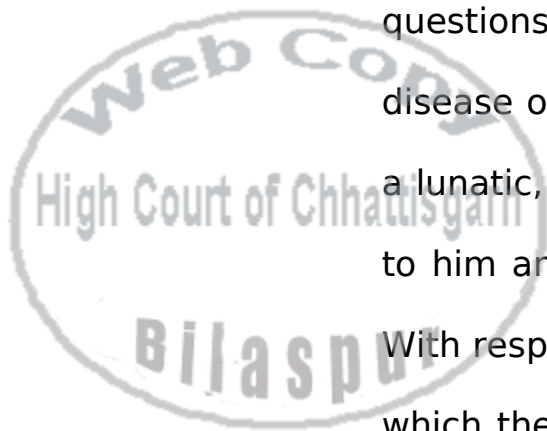
“118. Who may testify.-All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions





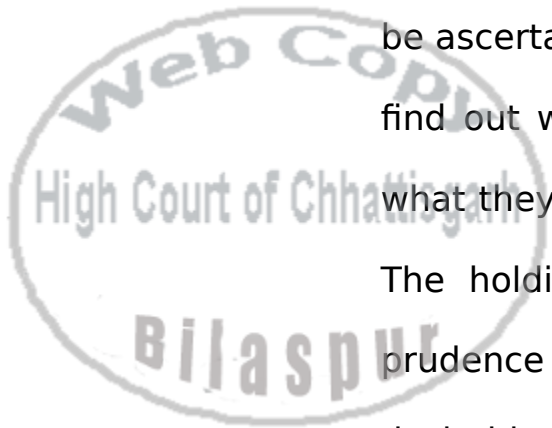
put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.”

16. 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.

17. 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 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.”

18. 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:

2 (1998) 7 SCC 177

3 (2009) 12 SCC 731



*“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 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.”

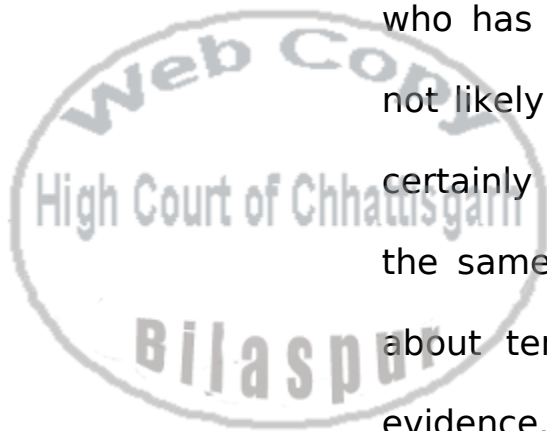
19. The position of law relating to the evidence of a child witness has been dealt with also by the Supreme Court in **Nivrutti Pandurang Kokate and others V. State of Maharashtra**⁴ and **Golla Yelugu Govindu v. State of Andhra Pradesh**⁵. In the case of **State of U.P. Vs. Krishna Master & Others**⁶ 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.

20. 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 Samiksha (PW-5), she was aged about 06 years. In order to satisfy himself, learned trial Court asked certain questions from her like, in which class she is studying, for which purpose she has come to the Court, whether she should speak truth or not and having satisfied that she understand the questions put to her, the Court has recorded her

4 2008 (12) SCC 565

5 2008(4) SCALE 569

6 (2010) 47 OCR (SC) 263





statement. In para 2, she has stated that she, papa and mummy were at home on that day. She was playing in the courtyard. Her mother held leg of her father and Kuldeep cut her father's throat by knife. In para 3 of her cross-examination, she has denied that her grandparents explained to her what statement to give in the Court. Spontaneously said that she has seen it. On the date of the incident, they had gone to see Ganesh immersion. When they came from Ganesh immersion, her father has died. Uncle Kuldeep had also gone to see Ganesh immersion. She has denied that when they came after seeing Ganesh immersion, uncle was also with them. She had not seen uncle. She has also denied that she did not see her father being murdered. She has denied that the accused have not committed murder. In para 7 of her cross-examination, she has admitted that when they returned, father had died. She has denied that door of father's room was closed. In para 8 of her cross-examination, she has stated that her grandparents don't even tell her anything about her mother.

21. Not only this, on the memorandum statement of appellant Kuldeep Ex.P-14, knife was recovered on his pointing out vide Ex.P-15, which was sent for FSL and as per FSL report, blood was found on knife seized from appellant Kuldeep Sahu.
22. Kallu Kumar (PW-6) is father of deceased Ramkishore Domar and father-in-law of accused / appellant Sakshi @ Chandni





Domar. In para 2 his evidence, Kallu Kumar has stated that Sakshi was married to his son in the year 2013 and lived on rent in Dinesh Agrawal's house in Baradwar. His son used to work in a bank. His son worked on the post of Cashier. He was in Bihar at the time of the incident. The incident is dated 22.09.2018, Sakshi called him at 12.30 in the night and told him that someone has murdered his son Ram Kishore by slitting his throat. Then he called his second son Satyendra and his wife and told them. He took the train and came to Korba on 24th. His daughter Mayadevi lives in Korba and he saw his sons dead body in his house. There were sharp injuries on his neck and left hand. He later came to know that his daughter-in-law Sakshi along with Kuldeep, had committed murder by slitting his throat. He came to know that Kuldeep had taken Rs.1.5 lacs from his son, both of them kept fighting over this matter. In the year 2018, when he had come to Baradwar, his daughter-in-law was not at home, his son had told that Kuleep had borrowed Rs.1.5 lacs from him and as and when he demanded money, his daughter-in-law quarreled his son. In para 13 of his cross-examination, he has stated that he later came to know that his daughter-in-law Sakshi along with Kuldeep had murdered his son by slitting his throat, this was told by his granddaughter Samiksha (his son's daughter). He met his granddaughter Samiksha in the evening immediately after death of his son. This thing told to him by his granddaughter





when she asked her. Samiksha had told him this during the programme. She had asked Samiksha what had happened, Samiksha told that mom, she and dad were at home, after that mom took me to see Ganesh immersion, dad was left alone at home, after that mom said that she is coming after drinking water, there should be a delay in mom's arrival. Then she went back home alone, the door of the house was a little open, when she opened the door, she heard the sound of father screaming, then she opened and saw that mom was holding father's feet and Kuldeep uncle was slitting his throat.

23. On the basis of testimony of eyewitness Samiksha (PW-5) and further on the basis of memorandum statement (Ex.P-14), knife has been recovered vide Ex.P-15 and it has been subjected to FSL, in which blood was found and as such, the trial Court has rightly convicted the appellants on the basis of the aforesaid incriminating evidence based on testimony of eyewitness Samiksha (PW-5), memorandum statement and recovery of knife, in which blood was found, as such, the trial Court is absolutely justified in convicting appellant Kuldeep Sahu for offence under Sections 302/34 and 450 of the IPC and appellant Sakshi @ Chandni Domar for offence under Sections 302/34 and 201 of the IPC. We do not find any merit in these appeals.

24. In the result, this Court comes to the conclusion that the prosecution has succeeded in proving its case beyond all



reasonable doubts against the appellants. The conviction and sentence as awarded by the trial court to the appellants is hereby upheld. The present criminal appeals lack merit and are accordingly **dismissed**.

25. It is stated at the Bar that the appellants are in jail. They shall serve out the sentence as ordered by the trial Court.
26. The Registry is directed to transmit the certified copy of this judgment along with the record to the trial Court concerned for necessary information and compliance.

Sd/-

(Rajani Dubey)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice





HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No.1492 of 2023

Kuldeep Sahu

-Versus-

State of Chhattisgarh

Head-Note

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.

