



2025:CGHC:19047-DB

**AFR****HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 1374 of 2024**

Chaneshwari Sahu W/o Late Ganesh Ram Sahu Aged About 28 Years  
R/o Village- Gunjiyabod, Police Station- Hasaud, District- Sakti, C.G.

**--- Appellant****Versus**

State of Chhattisgarh Through - Station House Officer, Police Station-  
Hasaud, District- Sakti, Chhattisgarh.

**--- Respondent****CRA No. 1363 of 2024**

Pramod Kumar Sahu S/o Govardhan Sahu Aged About 23 Years R/o  
Village Gunjiyabod, Police Station Hasoud, District - Sakti (C.G.)

**--- Appellant****Versus**

State of Chhattisgarh Through Station House Officer, Police Station -  
Hasoud, District Sakti (C.G.)

**--- Respondent**

(Cause-title taken from Case Information System)

For Appellant (In CRA No.1374/2024)	:	Mr. Dharmesh Shrivastava, Advocate
For Appellant (In CRA No.1363/2024)	:	Mr. Tarun Dansena, Advocate
For State/Respondent	:	Mr. Nitansh Jaiswal, Panel Lawyer

**Hon'ble Shri Ramesh Sinha, Chief Justice**  
**Hon'ble Shri Arvind Kumar Verma, Judge**

**Judgment on Board**

**Per Ramesh Sinha, Chief Justice**

**28.04.2025**

1. Heard Mr. Dharmesh Shrivastava, learned counsel for the appellant in CRA No.1374/2024, Mr. Tarun Dansena, learned counsel for the appellant in CRA No.1363/2024 and Mr. Nitansh Jaiswal, learned Panel Lawyer, appearing for the State/respondent.
2. Regard being had to the similitude of the questions of facts and law involved, as both these appeals are clubbed together being arising out of a common crime vide impugned judgment dated 29.06.2024 passed by the Second Additional Sessions Judge, Sakti, District Janjgir-Champa, Chhattisgarh in Sessions Trial No.32/2023, these appeals have been clubbed together, heard together and are being decided by this common judgment.
3. Appellant-Pramod Kumar Sahu (A-1) has preferred CRA No.1363/2024 and appellant-Chaneshwari Sahu (A-2) has preferred CRA No.1374/2024, questioning the impugned judgment dated 29.06.2024 passed by the Second Additional Sessions Judge Sakti, District Janjgir-Champa, Chhattisgarh in Sessions Trial No.32/2023, by which they have been convicted and sentenced as under :-

**Appellant – Pramod Kumar Sahu**

<b><u>Conviction</u></b>		<b><u>Sentence</u></b>
Under Section 302 read with Section 34 of the Indian Penal Code, 1860	:	Life imprisonment and fine of Rs.2,000/-, in default of payment of fine, additional rigorous imprisonment for 1 year.
Under Section 201 read with Section 34 of the Indian Penal Code, 1860	:	Rigorous imprisonment for 3 years and fine of Rs.1,000/-, in default of payment of fine, additional rigorous imprisonment for 2 months.
All the sentences were directed to run concurrently		

**Appellant – Chaneshwari Sahu**

<b><u>Conviction</u></b>		<b><u>Sentence</u></b>
Under Section 302 read with Section 34 of the Indian Penal Code, 1860	:	Life imprisonment and fine of Rs.2,000/-, in default of payment of fine, additional rigorous imprisonment for 1 year.
Under Section 201 read with Section 34 of the Indian Penal Code, 1860	:	Rigorous imprisonment for 3 years and fine of Rs.1,000/-, in default of payment of fine, additional rigorous imprisonment for 2 months.
Under Section 203 of the Indian Penal Code, 1860	:	Rigorous imprisonment for 1 year.
All the sentences were directed to run concurrently		

4. Case of the prosecution, in brief, is that complainant/informant of the case, Dukalu Ram (PW-1), along with Ishwar Sahu (PW-6), Bhasham Kumar Sahu (PW-10) and village Kotwar Chandram Banjare, went to the Police Station and lodged a report alleging that his son Ganeshram Sahu went anywhere on 27.03.2023 at about 8.30 PM, who was not found by searching. On the basis of report lodged by the complainant, the police registered a missing report and it is alleged that on 30.03.2023 the dead body of Ganesh Ram Sahu was seen in Son River. On the basis of report lodged by the complainant, the police registered missing intimation No.9/2023 vide Ex.P/2 and missing inquiry was conducted. The dead body was sent for postmortem and short postmortem report (Ex.P/22) was received by the Police. During course of missing inquiry, it was disclosed by the witnesses that the appellant-Chaneshwari Sahu was having conversation with co-accused Pramod Sahu through mobile phone and for which, there was a dispute between husband and wife and it was suspected that the appellant-Chaneshwari Sahu along with Pramod Sahu committed murder of the deceased and threw the dead body into the river. During the course of investigation, it was found that Ganesh Ram Sahu was murdered and for disappearance of the evidence his dead body has been thrown into Son river, therefore, the police registered First Information Report bearing Crime No. 47/2023 for the offence punishable under Sections 302, 201 of Indian Penal

Code, 1860 (for short, 'IPC') against unknown person vide Ex.P/29.

5. After registering the offence punishable under Sections 302, 201 of IPC, the investigation was initiated. Summons under Section 175 of Cr.P.C. was given to the witnesses vide Ex.P/1 and crime details form has been prepared vide Ex.P/3. Notice under Section 160 of Cr.P.C. was given vide Ex.P/5 and Police statement of Dukalu Ram (PW-1) was recorded vide Ex.P/6. Crime details form, spot map and Naksha Panchayatnama were prepared vide Ex.P/7 to Ex.P/9, respectively. During the course of investigation, memorandum statements of appellants-Pramod Kumar Sahu and Chaneshwari Sahu were recorded vide Ex.P/10 and Ex.P/11 and a woolen scarf was seized from the possession of appellant-Pramod Kumar Sahu, one iron rod and touch screen Realme mobile phone were seized from the possession of appellant-Chaneshwari Sahu vide seizure memo Ex.P/12 to Ex.P/14.
6. It is also found during investigation that on 27.03.2023, the deceased saw the accused persons (appellants-Pramod Kumar Sahu and Chaneshwari Sahu) in compromising position having physical relationship, then he started abusing the accused persons and then, both the accused persons get him lying over the bed and thereafter, committed murder by throttling. The accused persons further committed disappearance of the evidence of the crime by throwing the dead body of Ganesh Ram

Sahu into river at about 12.00-12.30 AM night and his mobile phone was also thrown into the river and thereafter, both the accused persons returned back to house. It was further found that the accused persons lodged a false missing report at Police Station regarding missing of the deceased. The accused persons were arrested vide arrest memo Ex.P/19 and Ex.P/30, respectively. The dead body of the deceased was sent for postmortem examination, which was conducted by Dr. Surendra Kumar Tandon (PW-11), who opined in the postmortem report (Ex.P/21) that the cause of death of deceased seems to be asphyxia due to throttling and the death was homicidal in nature.

7. After the proceedings of arrest of the accused, other necessary investigation was completed and the charge-sheet was presented in the court of Judicial Magistrate First Class, Jaijaipur, who in turn committed the case to the Court of Sessions, Janjgir-Champa, from where the Second Additional Sessions Judge, Sakti, District Janjgir-Champa, Chhattisgarh received the case on transfer for trial.
8. After due investigation, both the appellants were charge-sheeted for the aforesaid offences in which they abjured their guilt and entered into defence stating inter-alia that they have not committed any offence and they have falsely been implicated in crime in question.

- 9.** In order to bring home the offence, the prosecution examined as many as 15 witnesses PW-1 to PW-15 and exhibited 36 documents Exs.P/1 to P/36. The defence has not examined any witness, but exhibited 6 documents as Ex.D/1 to D/6 in their support.
- 10.** The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment dated 29.06.2024, proceeded to convict the aforesaid accused persons for the aforesaid offences and sentenced them as aforementioned, against which, these two criminal appeals have been preferred.
- 11.** Mr. Dharmesh Shrivastava, learned counsel for the appellant in CRA No.1374/2024 submits that the appellant is innocent and has not committed any offence and she has been falsely implicated in crime in question. He further submits that the child witness, during deposition, improved her version and stated for the first time that she had seen the incident, but in her police statement (Ex.D/4), there is no such disclosure about witnessing the murder. It has been contended that the material omissions amount to contradictions, especially when a witness introduces a new fact in court for the first time and such improvements cast serious doubt on the credibility and reliability of the child witness and improvements materially affecting the prosecution case are fatal to the prosecution. It has been further contended that the entire prosecution case is primarily based on the memorandum

statement and seizure of articles like iron rod, scarf, and mobile phone as well as memorandum and recovery alone are not sufficient to convict without independent and credible evidence connecting the accused to the crime as also the recovery alone, without substantive corroboration, is insufficient to sustain conviction. It has been argued that the prosecution relies heavily on suspicion based on mobile phone conversations and alleged motive i.e. illicit relationship. Mere suspicion, however strong, cannot take the place of proof as well as the suspicion, however grave, cannot substitute proof beyond reasonable doubt. It has been further argued that delay between the missing report and the registration of FIR for murder (about 3 days) is not satisfactorily explained and important links in the chain of circumstances are missing or poorly established. It has been submitted that no independent or neutral witnesses have been examined to support the prosecution case and only interested or related witnesses have been produced, affecting the fairness of the trial. It has been further submitted that the postmortem report (Ex.P/22) does not clearly establish antemortem injuries or precise cause of death and in absence of clinching medical evidence, the benefit of doubt must go to the accused. The act of lodging a false missing report itself shows that the case was fabricated later to fit the suspicion theory after the dead body was found. It has been argued that each circumstance relied upon must be firmly established and must form a complete chain leading only to the hypothesis of guilt

of the accused and in the present case, the chain is broken and leads to other plausible hypotheses as also the circumstantial evidence must exclude every possible hypothesis except the guilt of the accused. It is further submitted that the prosecution has miserably failed to establish the guilt of the appellant beyond reasonable doubt and conviction of the appellant solely on the basis of alleged memorandum and recovery is wholly unsustainable in law, particularly when the star witness, being a child witness, has made significant improvements in her court testimony as compared to her police statement. The prosecution case hinges upon mere suspicion arising from alleged mobile communication and motive, which cannot substitute the strict standard of proof required for conviction in a criminal trial. He lastly submitted that the trial Court has committed grave legal error in convicting the appellant for offence under Sections 302/34, 201/34 and 203 of the IPC as the prosecution has failed to bring home the offence and child witness Madhukumari Sahu (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. Reliance has been placed upon the judgments rendered by Hon'ble Supreme Court in the matters of ***Subhash Aggarwal v. State of NCT Delhi*** reported in ***2025 SCC OnLine SC 808***, ***State of Rajasthan v. Smt. Kalki and Another*** reported

in **(1981) 2 SCC 752, Hanumant Govind Nargundkar v. State of Madhya Pradesh** reported in **(1952) 2 SCC 71** and **Nagendra Sah v. State of Bihar** reported in **(2021) 10 SCC 725** as also the judgment rendered by this Court in **Criminal Appeal No. 22 of 2022**; parties being **Ashish Gupta v. State of Chhattisgarh**, decided on **10.05.2024**, to buttress his submissions.

12. Mr. Tarun Dansena, learned counsel for the appellant in CRA No.1363/2024 submits that appellant has been falsely implicated in the crime in question. He further submits that 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. It has been contended that 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. It has been further contended that the learned trial Court has wrongly convicted the appellant on the basis of seizure of articles, which has not been duly proved. It has been submitted that 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. It has been further submitted that the learned trial Court has committed grave legal error in relying upon sole testimony of child witness Madhukumari Sahu (PW-5) without further corroboration, which is unsafe and in absence of any corroboration, testimony of Madhukumari Sahu (PW-5) could

not have been relied upon. Therefore, the appeal be allowed and the judgment of the trial Court be set-aside.

13. On the other hand, Mr. Nitansh Jaiswal, learned Panel Lawyer appearing for the respondent/State supports the impugned judgment and submits that impugned judgment and submit that statement of Madhukumari (PW-5) is wholly reliable and trustworthy as she was 08 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. It has been contended that in the 161 Cr.P.C. statement, Madhukumari Sahu (PW-5) has not narrated the incident before the Police because her mother threatened her for killing herself and for the first time before the Court, Madhukumari Sahu (PW-5) has narrated the incident of murder of her father. He relied upon the decision of the Supreme Court in the matter of ***Shivji Genu Mohite v. State of Maharashtra*** reported in ***AIR 1973 SC 55*** to contend that the appellants have rightly been convicted by the trial Court and as such, the appeals deserve to be dismissed. He further submits that the learned trial Court has come to the conclusion regarding involvement of the accused / appellants in the crime in question under the concluding paras of the judgment, in which the learned trial Court has observed all incriminating circumstances against the accused /

appellants, which connect them 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 appeals deserve to be dismissed.

14. 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.
15. At the outset, it would be relevant first to notice the questions for determination formulated by the learned trial Court for the trial, which states as under:-

*“1. Whether the accused had a common intention and in furtherance of it, intentionally and knowingly cause the murder of deceased Ganesh Ram Sahu?*

*2. Whether the accused, with a common intention to conceal the fact of murder of the deceased, throw away the mobile and the dead body, hide the towel/scarf/Gamchha in the house and destroyed the evidence by breaking and burning the mobile and SIM and throwing the ashes in the river?*

*3. Whether, the accused, despite knowing that the crime of murder of deceased Ganesh Ram Sahu, gave false information to the father and family members of the deceased*

*by not giving such information despite being legally bound to inform about the crime of murder?*

*4. Whether the accused, despite having knowledge of the crime of murder of Ganesh Ram Sahu, intentionally omitted to give information by not giving information despite being legally bound to do so?"*

**Findings of the trial Court:-**

- 16.** The learned trial Court while appreciating the evidence available on record, came to the conclusion that the accused had killed the deceased by wrapping a shawl (*Gamchha*) around his neck and throwing the body in the Son river. It is further held by the trial Court that hiding the body in the house with a *Gamchha* and recovering the body from the Son river was proved by the statements of prosecution witnesses, which proved that the accused persons together intentionally murdered Ganesh Ram Sahu by wrapping a *Gamchha* around his neck and strangulating him and destroyed the evidence of murder. It is further proved from the statement of prosecution witnesses that accused Chaneshwari Sahu, despite knowing about the crime of murder, intentionally gave false information to the parents and family members of the deceased that the deceased went with a person in a white car and did not return, on the basis of which Dukalu Ram (PW-1) gave information about the missing person at Police Station Hasaud, whereas it is proved that accused Chaneshwari

Sahu along with accused Pramod Kumar Sahu intentionally murdered Ganesh Ram Sahu. Thus, both of them were convicted for the offence punishable under Sections 302/34 201/34 of the IPC as well as appellant Chaneshwari Sahu has been also convicted for the offence punishable under Section 203 of the IPC.

- 17.** In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
- 18.** The first question for consideration would be, whether the trial Court was justified in holding that death of deceased to be homicidal in nature ?
- 19.** The trial Court, relying upon the statement of Dr. Surendra Kumar Tandon (PW-11), who has conducted postmortem on the body of deceased vide Ex.P/27, gave its report vide Ex.P/21 and has clearly come to the conclusion that Ganesh Ram Sahu died due to asphyxia on account of throttling 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 appellants. We hereby affirm the said finding.
- 20.** 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 Ganesh Ram Sahu were caused in an accident and it is also not possible that the injuries caused to them were self-inflicted. In such a situation, the evidence of the medical witness is trustworthy and assuming the postmortem report to be correct, the death of Ganesh Ram Sahu, due to asphyxia on account of throttling and the nature of his death, is established to be homicidal.

- 21.** The next question is that the appellants have been convicted on testimony of Madhukumari (PW-5), daughter of Chaneshwari Sahu (accused) and the deceased. 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 Uttar Pradesh*** reported in **(1998) 7 SCC 177**, the Hon'ble 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.”*

25. With regard to the testimony of child witness the Supreme Court in ***State of Karnataka v. Shantappa Madivalappa Galapuji &***

**others** reported in **(2009) 12 SCC 731** 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 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*** reported in **(2008) 12 SCC 565** and ***Golla Yelugu Govindu v. State of Andhra Pradesh*** reported in **2008 (4) Scale 569**. In the case of ***State of U.P. Vs. Krishna Master & Others*** reported in **(2010) 47 OCR (SC) 263**, 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 herein-above, in the present case, at the time of recording of the evidence of Madhukumari Sahu (PW-5), she was aged about 08 years.
- 28.** In order to satisfy, 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 statement. Madhukumari Sahu (PW-5) has stated in her evidence that accused Chaneshwari is her mother and she knew the accused Pramod Sahu, he visited her house frequently. Accused Pramod Sahu lived next to her new house and when Pramod came to her house, he used to give her money and send her away from the house. One day, the accused Pramod came to her house and hid under the bed. Then she told her mother that she would tell her father, so her mother grabbed her hair, hold her against the wall and beat her with force. She further stated that one day her father had gone to Hasaud, then her mother Chaneshwari called Pramod and stated to met him and in the same night when they all went to sleep after having dinner, she woke up hearing some noise and saw that her mother Chaneshwari and Pramod were beating her father. Pramod had climbed on her father's chest and her mother was pulling her father's neck with the help of scarf, then, she got scared and thoughted that they would kill her too, then she went to sleep.

After that her father was killed and thrown into the Son river. She further stated that after that she got up to urinate and her mother told her that when your father was eating food, a plain coloured car came and one man took her father away and her mother told her that the man did not even allow her father to wear slippers. Her mother had told him that if he told anyone about the incident, she would beat her very badly. Further, she has stated that later police came to her house for investigation, police interrogated her and took her statement, then she told the same thing that her mother had told her that a man came in a car and took his father away. When police came for investigation, police interrogated her mother also. Her mother had two mobile phones, one mobile was of her father and the other mobile was given to her mother by Pramod. She further stated that when the police came for investigation, they took a sabri and a brown coloured *Gamchha* with them. The said *Gamchha* belonged to accused Pramod. Earlier his sister Poornima used to live with her maternal uncle, but after the incident she has come to live with them.

- 29.** In cross-examination, she has stated that her grandparents' house and her parents' house are far away. While giving statement to the police, she did not tell that "when Pramod used to come to her house, he used to give her money and send her away from the house and one day accused Pramod came to her house and hid under the bed. One day, her father had gone to Hasaud, then her mother Chaneshwari called Pramod and on the same night, when

they all slept after having dinner, she woke up on hearing some noise and saw that her mother Chaneshwari and Pramod were beating her father. Pramod had climbed on her father's chest and her mother was pulling her father's neck with a scarf. She was scared and she thought that they would kill her too, then she went to sleep. While giving a statement to the police, she also told that "After that, she got up to urinate and her mother told her that when your father was having dinner, a plain coloured car came, then a man came out of it and took her father away and her mother told her that that man did not even let your father wear slippers. Her mother told her that if you tell anyone about the incident, then she will beat him very badly." She further stated that she did not tell the police about seeing her father being beaten while giving statement. She stated that her mother had said that if she told anyone, she would be beaten, so she did not tell anyone, as such, she did not tell her grandfather, grandmother, uncle, aunt or any other family member about seeing her father being beaten. She denied that her uncle Her grandmother and Ramnath told her what statement she had to give in the court. While giving her statement to the police, she had told them that she had not seen the incident of assault. She said that her mother had told her that if she told anyone, she would beat her, so she did not tell anyone.

- 30.** Although this witness has not mentioned about seeing the incident in her police statement Ex.D/4, but she has given a satisfactory explanation for not telling in the police statement. She has told

that her mother had threatened to beat her very badly if she told about the incident. She has also revealed that one day accused Pramod came to her house and hid under the bed. Then she told her mother that she will tell her father, then her mother caught her by hair and kept her against the wall and beat her very badly. Thus she was aware of her mother's ill-treatment. She has told that she was scared and she thought that they will beat her also, then she went to sleep. She says that her mother had said that if she will tell anyone, she will beat her, so she did not tell anyone. Thus this witness has given a satisfactory explanation for not telling in the police statement, due to which her statement cannot be doubted and her statement is reliable. She has also told that after waking up in the morning she saw her face and took out her clothes and when she her mother where her father had gone, her mother told her that a man had come with a car and taken away her father.

- 31.** Now it is important to see in the case whether the above-mentioned injuries caused to Ganesh Ram Sahu were caused intentionally and voluntarily by the accused persons by strangulating his neck with the help of scarf or Gamchha on the day of the incident?
  
- 32.** 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.

- 33.** Dr. Surendra Kumar Tandon (PW-11) has stated that on 30.03.2023, when the body of the deceased Ganeshram Sahu was brought from Police Station Hasaud by Constable Mahendra Maheshwari No. 53 for postmortem, it was examined and the following things were found:-

*“The body of the deceased was wrapped in a woollen blanket of different colours and was wet. The deceased's vest was dark brown and wet. Full pants were of jewel blue colour which were wet and had mud on them. One under wear was dark brown and wet. One belt was black in colour. The body of the deceased was half rotten and had worms infestation. Sign of marbling was present. Palms of both hands showed signs of being wet for a long time. Nails had cyanosis which had turned blue. Tongue was protruding out and mouth was open. Tongue had bite marks. Neck of the deceased was moving easily in all four directions. Skin near neck was dark brown and had dark red colour due to bite marks. Physical condition of the deceased was healthy.”*

- 34.** Dr. Surendra Kumar Tandon (PW-11) further stated that upon internal examination, he was found following injuries:-

*“1. There was no injury to the skull, cervix, spinal cord.*

*2. The membranes, ribs and softness were normal, lungs were congested.*

3. *There was swelling in the throat and windpipe, in which there was accumulation of blood due to cutting.*

4. *Left and right lungs were abnormal, in which there was swelling due to throat.*

5. *Perion percussion was normal.*

6. *Heart was flat and filled with blood.*

7. *Large vessels were normal.*

8. *Abdominal membrane, intestinal membrane, The mouth and oesophagus were swollen and flatulent.*

9. *The stomach and abdomen and its contents were palpated. The stomach was flatulent and 100 ml of fluid was present.*

10. *The small intestine contained food matter and fluid. The large intestine contained faecal matter and gas.*

11. *The liver, spleen and kidney were found intact, congested and swollen.*

12. *The urinary tract was empty.*

13. *The penis and ovaries were swollen.*

14. *The muscles and bones were found as before.”*

- 35.** Dr. Surendra Kumar Tandon (PW-11) further stated that according to him, deceased died due to strangulation and suffocation, the nature of death was homicidal, the deceased died within 72 hours of postmortem and the postmortem report is Ex.P/21. In cross-

examination, he has stated that if the seized towel/scarf is wrapped around the neck of the deceased in a circular manner and pulled to strangle him, then there will be a mark on the entire roundness of the neck. During postmortem, there were no marks of strangulation by wrapping the towel/scard on the outer part of the deceased's neck, but he has clarified in his own statement that the body was in water for a long time. Dr. Surendra Kumar Tandon (PW-11) is a medical expert and an independent witness and it is not shown from the record that he has any interest in any side or any animosity with the accused, due to which there is no reason to disbelieve his statement. Therefore, it is proved that the death of deceased Ganesh Ram Sahu was homicidal in nature.

- 36.** Dukalu Ram (PW-1) has deposed in his evidence that he knew the accused Pramod Sahu and Chaneshwari Sahu, who is his daughter-in-law. The deceased Ganesh is his son. The incident took place 4-5 months before on Ramnavami. On Tuesday morning, at about 7.00 AM, his daughter-in-law Chaneshwari called him and told him that his son was taken away by an unknown person in a Marshal vehicle at 9 o'clock in the night, then they searched for her son Ganesh in the village and nearby areas till 10.00 AM and when Ganesh was not found, they went to lodge a report at Police Station Hasaud. He further stated that on the second day of filing the report, Hasaud police came to his house and took his statement after interrogation. After that, they were searching for Ganesh's address, then on Thursday some

other village people told him that a dead body of a person was floating in the Son river, after which he went to Hasaud police station with the village Kotwar Chandram to give information. Thereafter he, the Kotwar and the police went to the Son river where the dead body was and saw that Ganesh Ram's dead body was in the river. The police made a Panchnama after doing the paperwork and sent the body for postmortem. After the postmortem, the dead body was cremated. The next day, police came near the Son river where many people were present. The police interrogated his daughter-in-law Chaneshwari, who told that Pramod Sahu along with others killed Ganesh Ram in the house by tying a towel/shawl/Gamchha around his neck and after killing him, they carried Ganesh Ram's dead body on their shoulders and took it to the Son river. Her daughter-in-law Chaneshwari had told that Ganesh Ram had thrown away his mobile. After that the police had the mobile immersed in the river but could not find it. There used to be fights between Ganesh Ram Sahu and daughter-in-law Chaneshwari from time to time. He further stated that he had informed about the sudden death of his son Ganesh Ram at Police Station Hasaud. On his information, FIR No.09/2023 was registered at Police Station Hasaud.

- 37.** This witness i.e. Dukalu Ram (PW-1) was declared hostile by the prosecution and asked indicative questions. Then he stated that the accused Chaneshwari used to talk on the phone with her daughter-in-law, accused Pramod, which was known to her son

Ganesh. Due to which, there were disputes between Ganesh and Chaneshwari and when the police interrogated her daughter-in-law and accused Pramod, they told that on 27.03.2023, both of them were having sex at night, which was seen by her son Ganesh, so both of them together strangulated him with the help of *Gamchha* and threw him in the Son river and told to make a false story and report it so that no one comes to know.

- 38.** In cross-examination, he has stated that his son Ganesh had left home in a Marshal vehicle of a person known to him without informing anyone, he had lodged a missing person report in the Hasaud police station. He further stated that he had informed the police station on the behest of his daughter-in-law Chaneshwari, he has not seen his daughter-in-law accused Chaneshwari and accused Pramod talking to each other on mobile. He had not seen his son Ganesh and Chaneshwari fighting over the above mentioned matter. Accused Chaneshwari had not given any statement in front of him. The accused had never been questioned by the police in front of him. The accused had not given a statement in front of him about the incident. Thus, this witness has stated that he had informed the police station on the behest of his daughter-in-law Chaneshwari about the deceased leaving home in a Marshal vehicle of a person known to him without informing anyone.
- 39.** Ramnath Sahu (PW-2) has stated that he knew accused Pramod

and accused Chaneshwari. Chaneshwari is his niece-in-law and deceased Ganesh is his nephew. The incident took place on the night of 27.03.2023 and on 28.03.2023, at about 8.00-9.00 AM, his brother-in-law Dukalu Ram and his sister Basant Bai called him. He told that his nephew Ganesh Ram is not at home since night, this is what his daughter-in-law Chaneshwari told him. Then he said that if he had gone somewhere, he will return by evening, but he did not return. On 28.03.2023, his brother-in-law called him again and told him that Ganesh Ram has not come home and he should come to his house in village Gunjiabod in the morning. Then he went to village Gunjiabod with his son on 29.03.2023. He further stated that he went to village Gunjiabod and asked his niece Chaneshwari what was the matter, then she told that on the night of 27.03.2023, a man came and called him as also took him out of the house in a white car. On 29.03.2023, at about 11.00 PM, the police came to question him about Ganesh's disappearance. When the police questioned Chaneshwari, she told that at night a man came in a white car and took Ganesh Ram with him. When the police were taking the statement, Chaneshwari's brother Dhakeshwar and Chaneshwari's father were present and after taking the statement, the police went to the police station and he returned to his home. He further stated that on 30.03.2023 at about 6.00 AM, he called his brother-in-law Dukalu and inquired about his nephew Ganesh Ram, then he told that he has not found him yet. One hour after his call, his brother-

in-law called him and told that his nephew's body has been found in the Son river, he should immediately come to village Gunjiabod. After that, he and his son went to the banks of the Son river in village Gunjiabod. On the banks of the Son river, a crowd of policemen and other people from police station Hasaud had gathered to see the body. His nephew's body was lying there, he could not see it and he touched his body with his hand, at that time, he was wearing full pants. He further stated that after that, Ganesh Ram's body was taken to Jaijaipur for postmortem after preparing the Panchnama. Policemen from Hasaud police station came, questioned Ganeshram's mother Basant Bai about the incident and also questioned him, then they told that Ganesh Ram lived in a separate house from the family. On 31.03.2023, Hasaud police came to the house of accused Chaneshwari and questioned Chaneshwari, then she told that she and Pramod together confessed to killing Ganesh Sahu by wrapping a towel/Gamchha around his neck. Thereafter, accused Chaneshwari and Pramod Sahu. Thereafter, the police took the accused to the incident spot, on the bank of Son river where the dead body was lying and interrogated them. Then the accused told that after committing the murder in the house, accused Chaneshwari hold one leg and one hand and accused Pramod held one leg and one hand and threw them near Son river. He further stated that his nephew Ganesh Ram had told him while he was alive that Chaneshwari and Pramod had an illicit relationship,

due to which, there was a dispute between Ganesh Ram and Chaneshwari. When Ganesh Ram Sahu talked about the said fact to his wife Chaneshwari in the month June 2022, Chaneshwari assaulted him on the head with the help of stick. Accused Chaneshwari told him that Ganeshram had seen her and Pramod Sahu having an illicit relationship, due to which he killed her by wrapping a towel around her neck.

- 40.** In the cross-examination, Ramnath Sahu (PW-2) he has stated that he cannot see, therefore, his son Yogesh had told him that women police and male police personnel had come from Hasaud police station, but he does not know their number. While giving statement to police he did not tell that "accused Chaneshwari had told her that Ganesh Ram had seen her and Pramod Sahu having sexual relations, as such, they killed him by wrapping a Gamchha around his neck."
- 41.** Basant Bai (PW-3) has stated that the incident took place about 6 months before during Ramnavami. On Tuesday morning, her daughter-in-law Chaneshwari told that her son Ganeshram was taken away by someone in a Marshal vehicle on Monday at 12 midnight and he has not returned. They searched for Ganesh Ram in the vicinity but could not find him. Three days later, Ganesh Ram's body was found floating in the Son river. The body was taken out and taken to Jaijaipur for postmortem. After postmortem, the dead body was brought to the village and

cremated. She further stated that on asking the next day, Chaneshwari told that she along with Pramod killed him by tying a Gamchha around his neck. She further told that she had hold one hand and one leg and accused Pramod was holding one hand and one leg and together and they threw Ganesh Ram in the river. She does not know why they were killed. They might have been killed because of their relationship. Once during a quarrel between Chaneshwari and Ganesh Ram, Chaneshwari had assaulted her son's head with a stick, after which blood had come out of Ganesh Ram's head. This witness was declared hostile by the prosecution and asked suggestive questions, she stated that her daughter-in-law Chaneshwari used to talk to Pramod Sahu on mobile, due to which there used to be fights between Chaneshwari and her son Ganesh. Chaneshwari and Pramod were having an illicit relationship, which Ganesh Ram had seen, due to which Chaneshwari and Pramod together murdered Ganesh Ram.

- 42.** In cross-examination, she has stated that he had given statement to the police that she did not tell at the time that "Chaneshwari Bai held one hand and one leg of Ganesh Ram and accused Pramod held one hand and one leg and took Ganesh Ram and threw him in Son river", but she has stated in her police statement Ex.D/2 that when the accused were interrogated, they told about the incident being committed by them.

- 43.** Thus, it is clear from the statements of the prosecution witnesses, particularly, the star witness i.e. Madhukumari Sahu (PW-5) an eyewitness to the incident, has clearly stated in her statement that when they had eaten dinner and slept, she woke up on hearing some noise and saw that her mother Chaneshwari and Pramod were assaulting her father. She further stated that Pramod had climbed on her father's chest and her mother was pulling her father's neck with the help of scarf/*Gamchha*. She was scared and thoughted that they would kill her too, as such she went to sleep. After that, they killed her father and thrown him in the Son river. She also stated that when she woke up to urinate, her mother told her that when her father was eating dinner, a white coloured car came, one man came out of it and took her father away with him. She deposed that her mother had told her that if she tell anyone about the incident, she will beat her very badly.
- 44.** Though, Madhukumari Sahu (PW-5) has not mentioned about seeing the incident in her police statement Ex.D/4, but she has denied not telling in her police statement and she has given a satisfactory explanation. She has stated that her mother had threatened to beat her severely, if she told about the incident. She has also revealed that one day, accused Pramod came to her house and hid under the bed, then she told her mother that she would tell her father. Her mother caught her by the hair and placed her against the wall and assaulted her. Thus, she was aware of her mother's misbehavior. She was scared and she

thoughted that they would beat her too, then she started sleeping. As such, she has given a satisfactory explanation for not telling the police in her statement, due to which her statement cannot be doubted and her statement is found to be reliable one.

- 45.** Not only this, on the basis of the memorandum of accused Pramod Kumar Sahu, a brown coloured woollen *Gamchha* used for strangulating the deceased is said to have been seized from the house of the deceased. An iron rod (small crowbar) and a touch screen mobile were also seized from the possession of accused Chaneshwari, which confirms the statement of witness Madhukumari Sahu (PW-5). Dr. Surendra Kumar Tandon (PW-11) has also stated that the death of the deceased Ganesh Ram Sahu had occurred due to strangulation by wrapping the seized *Gamchha* around the neck of the deceased. The Doctor has stated that the colour of the skin near the neck of the deceased was dark brown and there was swelling in the throat and windpipe. He opined that the cause of death of deceased seems to be asphyxia due to throttling and the death was homicidal in nature.
- 46.** The facts remains that other prosecution witnesses have also stated in their statements that the accused had killed the deceased by wrapping a scarf/*Gamchha* around his neck and throwing the body in the Son river. Hiding the body in the house with the help of *Gamchha* and recovering the body from the Son

river is proved by the statements of prosecution witnesses, which proved that the accused Pramod Kumar Sahu and Chaneshwari Sahu were intentionally murdered Ganesh Ram Sahu by wrapping a scarf/*Gamchha* around his neck and strangulating him as also they destroyed the evidence of murder.

- 47.** From the above, it is proved from the statement of prosecution witnesses that accused Chaneshwari, despite knowing about the crime of murder, intentionally gave false information to the parents and family members of the deceased that the deceased went with a person in a white car and did not return, on the basis of which Dukalu Ram (PW-1) gave information about the missing person at Police Station Hasaud, whereas Chaneshwari Sahu along with accused Pramod Kumar Sahu intentionally murdered Ganesh Ram Sahu by knowing and hiding the real facts.
- 48.** Taking into consideration the overall facts and circumstances of both the cases, we are of the opinion that the trial Court is absolutely justified in convicting appellant-Pramod Kumar Sahu for the offence punishable under Sections 302/34 and 201/34 of the IPC as well as further justified in convicting the appellant-Chaneshwari Sahu for offence under Sections 302/34, 201/34 and 203 of the IPC.
- 49.** 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 being CRA No.1374/2024 and CRA No.1363/2024, lack merit and is accordingly **dismissed**.

- 50.** It is stated at the Bar that the appellants are in jail. She shall serve out the sentence as ordered by the trial Court.
- 51.** Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellants are undergoing the jail term, to serve the same on the appellants informing them that they are 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.
- 52.** The trial Court record along with a copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action forthwith.

**Sd/-**

**(Arvind Kumar Verma)  
Judge**

**Sd/-**

**(Ramesh Sinha)  
Chief Justice**

**Head Note**

Testimony of a child witness has to be carefully scrutinised before the same is believed by the Court and if the Court finds it to be reliable, trustworthy and truthful, then the same would not be discarded on the mere premise that the witness happens to be a child witness and once the testimony of the child witness is corroborated by other evidences on record, then the same would be admissible.