*** THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**
&
***THE HONOURABLE SRI JUSTICE CHALLA GUNARANJAN**

+C.M.A.No.247 OF 2023

% 10.04.2025

Suryas Ravi Prakash Rao

……Appellant

And:

$ Mohithe Manohar Rao and others

….Respondents.

!Counsel for the appellant : Sri K.P. Abhiram

^Counsel for the respondents 1 to 3 : Sri Vivekananda Virupaksha

<Gist:
>Head Note:
? Cases referred:
[1] (2019) 7 SCC 42
[2] 2001 (3) ALD 454
3 2014 SCC OnLine Raj 140
[4] AIR 1935 Mad 195
[5] (2010) 2 SCC 654
[6] (2009) 7 SCC 322
[7] 1984 AIR 469
[8] (2008) 9 SCC 413
[9] (2009) 7 SCC 322
[10]. .2015 10 SCC 1
[11]. (2020) SCC (online) SC 887
[12] (1992) 3 SCC 573
13.(2020) 3 SCC 67
[14]. 2012 SCC OnLine Mad 5094
15. 2023 SCC OnLine All 4233

HIGH COURT OF ANDHRA PRADESH

* * * *

C.M.A.No.247 OF 2023

DATE OF JUDGMENT PRONOUNCED: 10.04.2025

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

THE HON'BLE SRI JUSTICE CHALLA GUNARANJAN

1.	Whether Reporters of Local newspapers may be allowed to see the Judgments?	Yes/No
2.	Whether the copies of judgment may be marked to Law Reporters/Journals	Yes/No
3.	Whether Your Lordships wish to see the fair copy of the Judgment?	Yes/No

RAVI NATH TILHARI, J

CHALLA GUNARANJAN,J

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE CHALLA GUNARANJAN

C.M.A.No.247 OF 2023

JUDGMENT: per the Hon'ble Sri Justice Ravi Nath Tilhari:-

1. Heard Sri K.P. Abhiram, learned counsel for the appellant and Sri Vivekananda Virupaksha, learned counsel for the respondents 1 to 3.

FACTS:

2. This appeal under Section 47 of the Guardian & Wards Act, 1890 (for short, the G.W.Act, 1890) has been filed by the appellant-father of the minor son Chi. Suryas Srivatsav (in short 'Ward') seeking his custody under Sections 9, 10 and 23 of the G.W.Act, 1890, from the respondents' custody, being aggrieved from the order of rejection of his petition G.W.O.P.No.13 of 2020 by order dated 12.12.2022 passed by the learned Principal District Judge, Ananthapuram.

3. The respondents 1 to 3 are the maternal grandfather, grandmother and uncle of the ward respectively.

4. The appellant was married to late Jyothi Manohar. Out of their wedlock, the son Chi Suryas Srivatsav was born. On

04.09.2017, in an incident at the appellant's home, his wife died, during treatment in Chandra Hospital. The respondents registered Crime No.146 of 2017 of IV Town Police Station, Ananthapuram under Sections 498-A, 302 and 201 read with Section 34 IPC against the appellant and his parents. It is the appellant's case that the respondents took away the Ward on pretext and against the wish. The ward was under forceful control and custody of the respondents. The appellant approached the respondents, but they did not give custody. The ward was being deprived of the love, affection and care of the appellant-father. He was falsely implicated in the case of death of his wife alleging it to be murder though it was a case of suicide. The appellant filed the G.W.O.P.No.13 of 2020 for custody of the ward submitting inter alia that the welfare of the ward was with the appellant.

5. The 1st respondent filed counter. The same was adopted by the respondents 2 and 3. They admitted the relationship. However, they submitted that there was demand of dowry, harassment to the wife, physical and mental, and that she was murdered. The appellant neglected the welfare of the ward. The Sessions Case No.207 of 2018 on the file of IV Additional District & Sessions Judge (Mahila Court) was pending against the

appellant and his parents. The ward deposed against the father. The appellant assaulted the minor and his conduct was to eliminate the child who was the only eye witness of the incident. The endeavour of the appellant was to stop the ward from deposing against him. The appellant never approached the respondents to take care of the ward or to know his welfare and wellbeing.

6. The respondents further pleaded that they admitted the child in Euro School, White Field, Bangalore in 1st Grade and that, (at the time of filing response), the ward was in 3rd grade. They were evincing great interest and care for the welfare of the ward. They had deposited Rs.5,00,000/- in fixed deposit, in the name of the ward for his future. It was pleaded that the safety, bright future and the welfare of the ward was not with the appellant or his parents, but was with the respondents. They pleaded that the 2nd respondent had filed G & W.C.No.101 of 2018 for appointment of Guardianship of the ward, in the III Additional Principal Judge, Family Court at Bangalore. But, without disclosing the same, the appellant filed G.W.O.P.No.13 of 2020 for custody of the ward in the court at Ananthpuram. In G & W.C.No.101 of 2018, I.A.No.5 of 2019 was filed by the present

appellant- father, seeking custody of the minor which was rejected.

7. During pendency of G.W.O.P.No.13 of 2020, the appellant was acquitted in S.C.No.207 of 2018.

8. In G.W.O.P.No.13 of 2020, the appellant examined himself as P.W.1 and got marked Ex.A.1. Joint photograph of himself with the ward and Ex.A.2 certified copy of the Judgment of his acquittal in S.C.No.207 of 2018 dated 12.04.2022, passed by the IV Additional Sessions Judge, Ananthapuram.

9. The respondents in G.W.O.P.No.13 of 2020 examined R.W.1, (3rd respondent) and marked Exs.B.1 to B.4 i.e original school fee receipts, original F.D Bonds, original certificate of participation and recognition relating to Ward and certified copy of order in I.A.No.5 of 2019 in G & W & W.C.No.101 of 2018 on the file of III Additional Principal Judge, Family Court, Bangalore.

10. The learned Court of Principal District Judge, Ananthapuram framed the following points for determination:

> "i) Whether the petitioner is entitled for the relief as prayed for?
>
> ii) To what relief?"

Order dated 12.12.2022 in G.W.O.P.No.13 of 2020:

11. The learned court came to the conclusion that after the death of Jyothi Manohari-appellant's wife/mother of the ward, in the year 2017, the ward was in the custody of the respondents. In S.C.No.207 of 2018 under Sections 498-A, 302 and 201 read with Section 34 IPC, though the appellant was acquitted, but the ward was the witness against the appellant. His statement was recorded under Section 164 Cr.P.C. The ward also deposed in the Sessions Case as P.W.No.8, and though his deposition was not relied upon by the learned Sessions Judge, while acquitting the appellant, but the Criminal Appeal No.380 of 2022, against the acquittal order, was pending in the High Court of Andhra Pradesh. The learned court observed that the welfare of the minor was of paramount consideration. It was not the rights of the contesting parties claiming or opposing custody. The court recorded that the petitioner/appellant was working as Government teacher and getting sufficient salary, but the 3rd respondent maternal uncle of the ward was also working as Software Engineer at Bangalore and was earning sufficiently. The maternal grandparents were aged persons and they had deposited amount in the name of the ward. The ward was also

admitted for his studies in the International School at Bangalore. So, the ward's welfare was being looked after by the respondents. The learned court also recorded that the ward did not accept to go with the father and if all of sudden the custody of the ward was given to the petitioner/appellant, the same would not be in the interest of the ward for his development. The learned court was of the view that it could not detach the ward with the maternal-grandparents and it was also not possible for the ward to live amicably with the appellant father. The learned court gave due weight to the fact that the appellant admitted that, the ward gave evidence in S.C.No.207 of 2018 against him. The ward also stated in his statement under Section 164 of Cr.P.C, against the appellant. The said incident, the court further recorded that, had impact in the mind of the ward till that date and the ward clearly refused to go along with the father when he was examined in court. The learned court then concluded that the interest and welfare of the ward for his education, health, welfare and affection and development was being looked after by the respondents who had made provision for his future as well. The learned court recorded that the appellant though natural guardian

being the father, but taking overall view of the matter, he could not be given custody.

12. The learned Court thus recorded the finding that the appellant was not entitled for the custody of the ward and dismissed the G .W.O.P.No.13 of 2020.

SUBMISSION OF LEARNED COUNSEL FOR THE APPELLANT:

13. The learned counsel for the appellant submitted that on the date of the incident 04.09.2017, the appellant was in the school and after knowing the incident, he rushed to the home and his parents took his wife to the hospital for treatment. On that day the elder sister of the 3rd respondent (the elder sister of the deceased wife) forcefully took away the son (ward) aged about 4 years at that time, on the pretext of giving company to him and later on she handed over the child to her brother and the parents, the present respondents 1 to 3. They tutored the son and made him to make statement against the appellant. The respondents did not permit the appellant to have a single visit of his child for the last six years, for the purpose of the criminal cases and spoiled the child's mind against the appellant. He submitted that the first respondent, (the father of the 3rd respondent), gave his statement before the Sessions Court that there were no big

issues/quarrels between his daughter and the appellant. There was no demand of dowry or the additional dowry. The learned Sessions Court did not believe the child testimony, for the reasons recorded and passed the order of acquittal. Against the order of acquittal, the criminal appeal is pending, but that cannot be a ground to decline the custody to the appellant.

14. Learned counsel for the appellant submitted that the appellant is working as Government teacher in A.P. State service and his father is a retired Tahsildar getting monthly pension. So, the appellant is in a better financial position to take care of his minor child. The ward lost his mother. In the absence of the mother, for his overall development, and welfare the custody of the child deserved to be given to the appellant-father, also being the natural guardian, alive. The ward cannot be deprived of his father's love, affection and care, nor the appellant of his son.

15. The learned counsel for the appellant submitted that the appellant had previously filed G.W.O.P No.79 of 2018 in the Court of learned District Judge, Ananthapuram for custody and during its pendency, there was a panchayat held by the elders of the community at Ananthapuram. It was agreed that the custody of the ward will be handed over to the appellant and in view

thereof the appellant withdrew the G.W.O.P.No.79 of 2018. But, thereafter the respondents refused to hand over the custody of the child, so, the present G.W.O.P was filed. The dismissal of G.W.O.P No.79 of 2018, therefore, should not be considered against the appellant.

16. Learned counsel for the appellant placed reliance in the following cases in support of his contentions:

1. **Tejaswini Gaud and others vs. Shekhar Jagdish Prasad Tewari and others[1].**

2. **Manchala Hushikesh v. Terala Pradeep Kumar & others[2]**

3. **Anuj Sharma vs. Ram Gopal[3]**

SUBMISSION OF THE LEARNED COUNSEL FOR THE RESPONDENTS:

17. Learned counsel for the respondents submitted that when the trial of the Sessions Case was pending, the appellant, had filed G.W.O.P.No.79 of 2018 on the file of the District Judge, Ananthapuram for the custody of the child. But he got it dismissed for default and thereafter he got it restored and after

[1] (2019) 7 SCC 42
[2] 2001 (3) ALD 454
[3] 2014 SCC OnLine Raj 140

cross-examination in that case, he willingly got it dismissed as withdrawn, on 04.06.2019. The appellant, again filed G.W.O.P.No.13 of 2020, on the file of the Principal District Judge, Anantahapuramu. He submitted that the appellant-father did not seek the custody of the minor bonafidely. If he had really the bonafides and thought of the wellbeing and welfare of the child, he would not have got G.W.O.P.No.79 of 2018 dismissed. He submitted that there was no such compromise to hand over the custody, which was also practically improbable in view of the pendency of the Sessions Case against the appellant as also the respondents had already filed G & W.C.No.101 of 2018 for declaring them as the guardian of the ward. He submitted that the G.W.O.P.No.79 of 2018 was filed by the appellant only to gravel out of the criminal case in which the ward was the only eye witness. The appellant did not visit the child in past so many years and so, he had no interest in the welfare of the child.

18. The respondents' counsel further submitted that in G & W.C.No.101 of 2018 an interim injunction was granted on 04.04.2018 by the III Additional Principal Judge, Family Court, Bangalore, restraining the appellant from taking the minor child from the custody of the respondents and while the said order was

in force, the appellant tried to take away the child from the custody of respondents on 03.05.2023 on some pretext. A written complaint was given to the local police on 14.05.2023 and an application, before the Family court to punish the appellant for disobeying the injunction order, was also filed.

19. Learned counsel for the respondents submitted that the respondents have filed Criminal Appeal No.380 of 2022, challenging the order of acquittal of the appellant in Sessions Case No.207 of 2018, which is pending in this court. He submitted that in view of the pendency of Criminal Appeal and the child being an eye witness against the appellant, his custody deserved not to be given to the father-appellant. The welfare of the ward is with the respondents and they are looking after him ensuring his welfare and interest.

20. Learned counsel for the respondents placed reliance on the following judgments:

i) **Muthuswami Chettiar and others vs. K.M. Chinna Muthuswami Moopanar**[4]

ii) **Nil Ratan Kundu and another vs. Abhijit Kundu**[5]**,**

iii) **Anjali Kapoor vs. Rajiv Baijal**[6]

---

[4] AIR 1935 Mad 195
[5] (2010) 2 SCC 654

POINTS FOR DETERMINATION IN APPEAL:

21. The points that arise for our consideration and determination are:

A. "Whether the appellant-father is to be given the custody of his minor son (ward) or it is to continue with the respondents, considering the welfare of the minor?

B. Whether the order dated 12.12.2022 dismissing G.W.O.P.No.13 of 2020, refusing custody of the ward to the appellant father, is legally justified or it calls for interference?"

THE AFFIDAVIT ETC FILED IN APPEAL:

22. In appeal, the respondents have inter alia filed the followings:

i) the counter affidavit dated August, 2023, inter alia annexing therewith the memo of the Criminal Appeal No.380 of 2022 filed by them against the order of acquittal.

ii) memo dated 02.08.2024 brining on record, inter alia the order dated 23.04.2024 in I.A.No.10 of 2018 in G & W.C.No.101 of 2018 dismissing the application of the appellant for visitation rights.

---

[6] (2009) 7 SCC 322

iii) the memo dated 18.09.2024, annexing therewith the copies of the depositions of P.Ws.1 to P.Ws.14 in S.C.No.207 of 2018, as also the copies of the statements of A.1 to A.3 under Section 313 Cr.P.C.

iv) the memo dated 01.10.2024, annexing therewith the photographs of the ward which were filed in G & W.C.No.101 of 2018 on the file of the III Additional Principal Judge, Family Court, Bangalore.

v) the memo dated 09.12.2024 brining on record the copy of the orders dated 25.09.2024 and 22.10.2024 passed in W.P.No.16271 of 2024 by the High Court of Karnataka.

Whereas, the appellant has also inter alia filed the followings:

i) the reply/rejoinder affidavit dated 25.08.2024 to counter affidavit dated August, 2023, and

ii) the written pleadings with copy of the cited judgments.

ANALYSIS:

23. We have considered the aforesaid submissions and perused the material on record.

POINT-A:

24. The learned court dismissed the custody petition for the reasons, to summarise, as recorded in para 22 of its judgment. The same is reproduced as under:

> "22. Admittedly, the petitioner (father of the ward) is working as Govt., Teacher and getting sufficient salary. On the other hand, the maternal-uncle of ward is working as Software Engineer at Bangalore and getting sufficient income. The maternal grandparents (R1 and R.2) being aged persons and they deposited some amount in the name of the Ward and joined the ward in International school at Bangalore and looking after all his welfare. As the petitioner is having sufficient means to maintain the said ward and the said ward has not accepted to go with his father, so all of a sudden, if the custody of a minor child (ward) is given to the petitioner, it is not possible to the ward to develop love and affection upon his father (petitioner herein), as the said ward is living with his grandparents since the death of his mother and he is in the care and custody of his maternal uncle as well as maternal grandparents (R1) to R3). Therefore, all of a sudden, the court cannot detach the ward with his grandparents, as the welfare of the minor is a paramount consideration as discussed in detail above. If the ward is detached all off a sudden by this court, it

> is not possible to live amicably by the respondents as well as the ward. More over the petitioner himself admitted that ward gave evidence in S.C.No.207 of 2018 that the petitioner (father) assaulted his wife (mother of ward) when she lied on the bed and he throttled the neck of the deceased Jyothi. The ward also stated the said fact in his 164 Cr.P.C statement before the court that the petitioner killed his wife (mother of ward). The incident of death of mother of the ward may be impacts in the mind of the ward till date, hence he bluntly refused to go along with his father. The petitioner himself admitted that the respondents deposited some amount in the name of the ward and they joined the ward in International school and looking after his welfare with regard to education, health with live and affection. It is not the contention of the petitioner that he did not go for 2nd marriage and he wants to live with the ward only."

25. Thus, the main reason for rejection by the learned court was that the ward was witness against the father in Sessions Case in the incident of death of the mother of the ward and though the appellant was acquitted, the criminal appeal was pending and the ward refused to go to the father. So, the welfare of the ward was not with the appellant considering the impacts on the mind of the ward.

PRECEDENTS:

26. In custody matters, the position in law, is well settled and that is that, it is not the right of the person claiming, or opposing custody, but the welfare of the child, as a whole, which is of paramount consideration. It is also not the right of the natural guardian, to have the custody of the child, if it is not in the welfare of the child. Such consideration, i.e right, never prevails over the welfare and interest of the minor.

27. In **Laxmi Kant Pandey vs. Union of India**[7], the Hon'ble Supreme Court held that the welfare of the child takes priority above all else, including the rights of the parents.

28. In **Nil Ratan Kundu and Others vs. Abhijit Kundu**[8] , the Hon'ble Apex Court held that it is the welfare of the minor and of the minor alone, which is the paramount consideration. It is apt to refer paras 41 to 47 of **Nil Ratan Kundu** (supra), as under:-

> "41. In Saraswatibai Shripad Ved v. Shripad Vasanji Ved [AIR 1941 Bom 103 : ILR 1941 Bom 455] , the High Court of Bombay stated : (AIR p. 105) "...
>
> It is not the welfare of the father, nor the welfare of the mother, that is the paramount consideration for the Court. It is the welfare of the minor and of the minor

[7] 1984 AIR 469
[8] (2008) 9 SCC 413

alone which is the paramount consideration; (emphasis supplied)

42. In Rosy Jacob v. Jacob A. Chakramakkal [(1973) 1 SCC 840], this Court held that the object and purpose of the 1890 Act is not merely physical custody of the minor but due protection of the rights of the ward's health, maintenance and education. The power and duty of the court under the Act is the welfare of the minor. In considering the question of welfare of a minor, due regard has of course to be given to the right of the father as natural guardian, but if the custody of the father cannot promote the welfare of the children, he may be refused such guardianship.

43. The Court further observed that merely because there is no defect in his personal care and his attachment for his children, which every normal parent has, he would not be granted custody. Simply because the father loves his children and is not shown to be otherwise undesirable, does not necessarily lead to the conclusion that the welfare of the children would be better promoted by granting their custody to him. The Court also observed that children are not mere chattels, nor are they toys for their parents. The absolute right of parents over the destinies and the lives of their children, in the modern changed social conditions, must yield to the consideration of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of society and the guardian court in case of a dispute between the mother and the father, is expected

to strike a just and proper balance between the requirements of the welfare of the minor children and the rights of their respective parents over them.

44. Again, in Thrity Hoshie Dolikuka v. Hoshiam Shavaksha Dolikuka [(1982) 2 SCC 544], this Court reiterated that the only consideration of the court in deciding the question of custody of a minor should be the welfare and interest of the minor and it is the special duty and responsibility of the court. Mature thinking is indeed necessary in such situation to decide what will enure to the benefit and welfare of the child.

45. In Surinder Kaur Sandhu v. Harbax Singh Sandhu [(1984) 3 SCC 698 : 1984 SCC (Cri) 464] this Court held that Section 6 of the Hindu Minority and Guardianship Act, 1956 constitutes the father as a natural guardian of a minor son. But that provision cannot supersede the paramount consideration as to what is conducive to the welfare of the minor. (See also Elizabeth Dinshaw v. Arvand M. Dinshaw [(1987) 1 SCC 42 : 1987 SCC (Cri) 13] and Chandrakala Menon v. Vipin Menon [(1993) 2 SCC 6 : 1993 SCC (Cri) 485] .)

46. Recently, in Mausami Moitra Ganguli v. Jayant Ganguli [(2008) 7 SCC 673 : JT (2008) 6 SC 634] , we have held that the first and the paramount consideration is the welfare of the child and not the right of the parent.

47. We observed :

"The principles of law in relation to the custody of a minor child are well settled. It is trite that while determining the question as to which parent the care and control of a child should be committed, the first and the paramount consideration is the welfare and interest of the child and not the rights of the parents under a statute. Indubitably, the provisions of law pertaining to the custody of child contained in either the Guardians and Wards Act, 1890 (Section 17) or the Hindu Minority and Guardianship Act, 1956 (Section 13) also hold out the welfare of the child as a predominant consideration. In fact, no statute, on the subject, can ignore, eschew or obliterate the vital factor of the welfare of the minor. The question of welfare of the minor child has again to be considered in the background of the relevant facts and circumstances. Each case has to be decided on its own facts and other decided cases can hardly serve as binding precedents insofar as the factual aspects of the case are concerned. It is, no doubt, true that father is presumed by the statutes to be better suited to look after the welfare of the child, being normally the working member and head of the family, yet in each case the court has to see primarily to the welfare of the child in determining the question of his or her custody. Better financial resources of either of the parents or their love for the child may be one of the relevant considerations but cannot be the sole determining factor for the custody of the

child. It is here that a heavy duty is cast on the court to exercise its judicial discretion judiciously in the background of all the relevant facts and circumstances, bearing in mind the welfare of the child as the paramount consideration."

29. In **Anjali Kapoor vs. Rajiv Baijal**[9]**,** the Hon'ble Apex Court observed that even though the natural guardian of the child have the right to the custody of the child, the welfare of the minor has to be given paramount consideration.

30. In **ABC vs. State (NCT of Delhi)**[10], the Hon'ble Supreme Court held that in the matter of appointment or declaration of guardian of the minor, the Court is called upon to discharge its parens patriae jurisdiction. Upon a guardianship petition, being laid before the Court, the child concerned ceases to be in the exclusive custody of the parents; thereafter, until the attainment of majority, the child continues in curial curatorship.

31. In **Smriti Madan Kansagra vs. Perry Kansagra**[11], the Hon'ble Supreme Court held that it is a well-settled principle of law that the courts while exercising parens patriae jurisdiction would be guided by the sole and paramount consideration of what would best subserve the interest and welfare of the child, to

---

[9] (2009) 7 SCC 322
[10] 2015 10 SCC 1
[11] (2020) SCC (online) SC 887

which all other considerations must yield. The welfare and benefit of the minor child would remain the dominant consideration throughout.

32. In **Smriti Madan Kansagra** (supra), the Hon'ble Supreme court held, in paragraph 15, which is reproduced as under:-

> **"15.** We have carefully considered and deliberated upon the oral and written submissions made by Mr Shyam Divan, Senior Advocate, instructed by Mr P. Banerjee and Ms Nidhi Mohan Parashar on behalf of the appellant; and the submissions made by Mr Anunaya Mehta, Advocate instructed by Ms Inderjeet Saroop, Advocate representing the respondent. The issue which has arisen for our consideration is as to what should be the dispensation to be followed with respect to the custody of the minor child, Aditya who is now 11 years of age, till he attains the age of majority in 7 years' time.
>
> **15.1.** It is a well-settled principle of law that the courts while exercising *parens patriae* jurisdiction would be guided by the sole and paramount consideration of what would best subserve the interest and welfare of the child, to which all other considerations must yield. The welfare and benefit of the minor child would remain the dominant consideration throughout. The courts must not allow

the determination to be clouded by the inter se disputes between the parties, and the allegations and counter-allegations made against each other with respect to their matrimonial life. In *Rosy Jacob* v. *Jacob A. Chakramakkal* [*Rosy Jacob* v. *Jacob A. Chakramakkal*, (1973) 1 SCC 840] this Court held that : (SCC p. 855, para 15)

"*15*. … The children are not mere chattels : nor are they mere playthings for their parents. *Absolute right of parents over the destinies and the lives of their children has, in the modern changed social conditions, yielded to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society*.…"

(emphasis supplied)

15.2. A three-Judge Bench of this Court in *V. Ravi Chandran (2)* v. *Union of India* [*V. Ravi Chandran (2)* v. *Union of India*, (2010) 1 SCC 174 : (2010) 1 SCC (Civ) 44] opined : (SCC p. 194, para 27)

"*27*. … It was also held that whenever a question arises before a court pertaining to the custody of a minor child, *the matter is to be decided not on considerations of the legal rights of the parties, but on the sole and predominant criterion of what would serve the best interest of the minor*."

(emphasis supplied)

15.3. Section 13 of the Hindu Minority and Guardianship Act, 1956 provides that the welfare of the minor must be of paramount consideration while

deciding custody disputes. Section 13 provides as under:

"**13. *Welfare of minor to be paramount consideration***.—(1) In the appointment or declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration.

(2) No person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor."

15.4. This Court in *Gaurav Nagpal* v. *Sumedha Nagpal* [*Gaurav Nagpal* v. *Sumedha Nagpal*, (2009) 1 SCC 42 : (2009) 1 SCC (Civ) 1] held that the term "welfare" used in Section 13 must be construed in a manner to give it the widest interpretation. The moral and ethical welfare of the child must weigh with the court, as much as the physical well-being. This was reiterated in *Vivek Singh* v. *Romani Singh* [*Vivek Singh* v. *Romani Singh*, (2017) 3 SCC 231 : (2017) 2 SCC (Civ) 1] , wherein it was opined that the "welfare" of the child comprehends an environment which would be most conducive for the optimal growth and development of the personality of the child.

15.5. To decide the issue of the best interest of the child, the Court would take into consideration various factors, such as the age of the child; nationality of the child; whether the child is of an intelligible age and capable of making an intelligent preference; the environment and living conditions available for the holistic growth and development of the child; financial resources of either of the parents which would also be a relevant criterion, although not the sole determinative factor; and future prospects of the child.

15.6. This Court in *Nil Ratan Kundu* v. *Abhijit Kundu* [*Nil Ratan Kundu* v. *Abhijit Kundu*, (2008) 9 SCC 413] set out the principles governing the custody of minor children in para 52 as follows : (SCC p. 428)

"*Principles governing custody of minor children*

52. In our judgment, the law relating to custody of a child is fairly well settled and it is this : in deciding a difficult and complex question as to the custody of a minor, a court of law should keep in mind the relevant statutes and the rights flowing therefrom. But such cases cannot be decided *solely* by interpreting legal provisions. It is a human problem and is required to be solved with human touch. A court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child. In selecting a guardian, the court is exercising parens patriae jurisdiction and is expected, *nay* bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the court must consider such preference as well, though the final decision should rest with the court as to what is conducive to the welfare of the minor."

(emphasis in original)

15.7. Section 17 of the Guardians and Wards Act, 1890 provides:

"**17. *Matters to be considered by the Court in appointing guardian***.—(1) In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.

> (2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.
>
> (3) *If the minor is old enough to form an intelligent preference, the Court may consider that preference*.
>
> (4) [*Omitted*]
>
> (5) The Court shall not appoint or declare any person to be a guardian against his will."
>
> (emphasis supplied)
>
> **15.8.** In the present case, the issue of custody of Aditya has to be based on an overall consideration of the holistic growth of the child, which has to be determined on the basis of his preferences as mandated by Section 17(3), the best educational opportunities which would be available to him, adaptation to the culture of the country of which he is a national, and where he is likely to spend his adult life, learning the local language of that country, exposure to other cultures which would be beneficial for him in his future life.

33. In **Nil Ratan Kundu** (supra), the Hon'ble Supreme Court summarised the principles of the custody of minor children, and observed that the law relating to custody of a child is fairly well settled. It was held that in deciding a difficult and complex question as to the custody of a minor, a court of law should keep in mind the relevant statutes and the rights flowing there from. But such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is required to be solved

with human touch. A court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child. In selecting a guardian, the court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the court must consider such preference as well, though the final decision should rest with the court as to what is conducive to the welfare of the minor.

CONSIDERATION IN THE FACTS OF PRESENT CASE:

34. Keeping in view the above principles, we proceed to consider the points for determination in the facts and circumstances of the present case.

35. The main contentions raised are acquittal of the appellant, the ward being an eye witness; the pendency of the criminal

appeal; as also some other cases filed between, the parties on the subject of custody, visitation rights with respect to the same ward. We would deal with those aspects under different heads.

(i) S.C.No.207 OF 2018 ORDER OF ACQUITTAL OF APPELLANT-FATHER; (WARD AS WITNESS):

36. The appellant has brought on record the judgment of his acquittal in Sessions Case No.207 of 2018. The respondents have also filed the copies of deposition of P.Ws.1 to 14 and the copies of the statement of A.1 to A.3 under Section 313 Cr.P.C. The appeal against the order of acquittal, filed by the 1st respondent is pending in this court. However, we proceed to consider certain aspects from the documents filed and in particular with respect to the statement of the child, given in those proceedings, in view of the submissions advanced from both the sides referring to the judgment of acquittal. The appellant contending that welfare of the child is with him being the father and after acquittal he cannot be denied the custody of his son. The respondents contending that the welfare of the child is not with the appellant-father, as the child was the eye witness of the incident, in which his mother died, respondents saying 'murder' and the appellant saying 'suicide'. The submission from the

appellant side is that the child was not the eye witness, but because of tutoring of the child by the respondents and the child being in their custody, was used as a witness against the appellant. The Sessions Court did not believe the child's testimony, and therefore, after acquittal, the father being the natural guardian should not be denied the custody.

37. In **Nil Ratan Kundu** (supra), the Hon'ble Apex Court observed that one of the material which is required to be considered by a court of law is, the character of the proposed guardian. It also referred to Kirtikumar Maheshanker Joshi v. Pradip Kumar Karunashanker Joshi, (1992) 3 SCC 573) and observed that whether the father was facing the charge under Section 498-A IPC and was facing the allegations of attributing death of child's mother, that was a relevant factor which the law court must address.

38. Para 72 of **Nil Ratan Kundu** (supra) reads as under:

> "72. In our considered opinion, on the facts and in the circumstances of the case, both the Courts were duty bound to consider the allegations against the respondent herein and pendency of criminal case for an offence punishable under Section 498A, IPC. One of the matters which is required to be considered by a Court of law is the `character' of the proposed guardian. In Kirit Kumar, this Court, almost in similar circumstances where the father was facing the charge under Section 498-A, IPC, did not grant custody of two

> minor children to the father and allowed them to remain with maternal uncle. Thus, a complaint against father alleging and attributing death of mother and a case under Section 498-A, IPC is indeed a relevant factor and a Court of law must address to the said circumstance while deciding the custody of the minor in favour of such person. To us, it is no answer to state that in case the father is convicted, it is open to maternal grandparents to make an appropriate application for change of custody. Even at this stage, the said fact ought to have been considered and appropriate order ought to have been passed."

39. The learned Sessions Court, for the reasons recorded in the judgment of acquittal did not believe the child testimony. In fact, it doubted the child to be an eye witness. Here, we make it clear that, the appeal against the order of acquittal is pending. So, whether the child was or was not the eye witness or the learned sessions court rightly or incorrectly, did not believe the child testimony, we are not observing, on any such aspect, conclusively, but, what we consider in the present appeal is, what stands as on today and that too, only for the purpose of considering the welfare of the child for his custody issue i.e whether, under the facts and circumstances of the case, it would be in the interest and welfare of the child, to handover his custody to the appellant-father, from the custody of the respondents. With that view only, we proceed to look into the judgment of the

sessions court, but not with a view, either to affirm or find fault with, the judgment of acquittal. Any observation made in this judgment shall be only for the purpose of this appeal. It shall not be relied upon by any of the parties in the pending criminal appeal in which the legality of the judgment of acquittal would certainly have an independent consideration.

40. The learned Sessions Court considered the testimony of the child (ward). He was P.W.8. The learned Sessions Court observed in paragraphs 22, 23, 24 and 35 which are as under:-

> ""22. At this juncture it is relevant to consider evidence of P.W.8 who is son of deceased and A.1 as according to prosecution P.W.8 is only eye witness in incident. His statement was recorded by learned Magistrate, who is examined as P.W.14 under Section 164 Cr.P.C statement. When P.W.8 came to court to give evidence the boy stated that, the accused scolded his mother and A.1 beat his mother from behind her mother with a stick that has a blade and bloodpool, and thereafter, his mother fell on the floor and accused tightening her neck with her chunny and after she died, they escaped by cleaning room. Neighbours came and saw dead body and left. After half an hour, P.W.2 and P.W.5 came and shifted his mother to hospital. Police examined him four days later and the Magistrate examined him 1 ½ months later. During his cross-examination, it is elicited that, he was examined by police at the house of P.W.2. P.W.2 and L.W.5 shifted deceased to hospital and he is residing with his

grandparents after the death of his mother. P.W.3 who is his maternal uncle took him to the Magistrate when his statement was recorded. He deposed that he did not state before police and Magistrate that, stick had iron blade, so also that, the accused tightened chunny around the neck of his mother and that, blood was cleaned by accused. At relevant time, he was studying LKG and used to go to school in van. He does not remember for how many times, he was brought from Bangalore to give his evidence in this case. Earlier he had love and affection towards his father but not now. First when his mother was taken to Chandra Hospital, Ananthapuram by P.W.2 and L.W.5 along with his mother he also went. He does not know for how many hours he was at that hospital and so also he does not remember whether, P.W.2 and L.W.5 have brought police to Chandra Hospital, but he denied the suggestion that, basing on the information given by P.W.2 and P.W.3, he is giving evidence."

23. When we look at the evidence of P.W.14 who recorded Sec.164 Cr.P.C Statement of P.W.8, the witness/P.W.8 stated before him that, during morning hours, accused beat his mother with a stick on the back of her head and also on her chin in the presence of himself. According to P.W.14, witness stated that, he voluntarily gave his statement and he recorded statement of P.W.8 in the presence of P.W.3. During cross-examination of P.W.14, it is elicited that, the witness was studying LKG as per records. Witness was questioned by him in Telugu and he answered in Telugu language. It took about twenty minutes to record his statement. Date and time of offence is not stated by the witnesses.

24. Therefore a perusal of evidence of P.W8 coupled with evidence of P.W.14 got to show that the boy does not remember as to what happened for the reason that, he stated that he does not remember for how many times he was brought to court from Bangalore to give evidence, when he is aged about 8 years and that to just a few days prior to his giving evidence. He was brought to court before giving evidence several times. So also that, he does not remember whether police came when deceased was brought to Chandra Hospital by P.W.2 and L.W.5. There is a discrepancy regarding weapon used for commission of offence before this court and before P.W.14. Further his statement was recorded by the investigating officer four days after incident and the reason for delay is not explained in giving his statement. Since in this case, the witness also came to court on several occasions, but did not give evidence also go to show that, he was more prone to tutoring during his young age. Further, he was residing at Bangalore with his grandparents and P.W.3, who accompanied him several times to court along with P.W.2.

35. Regarding presence of P.W.8 at relevant time by the side of his mother who was in pool of blood is considered doubtful for the reason that if the child is by the side of his mother, who was in pool of blood, definitely his clothes should have drenched in blood. Non-seizure of blood stained clothes of P.W.8 is a missing link in this case. Further non-examination of P.W.8 on the very same day or on the next day when P.W.1 to P.W.3 were examined along with other blood

relatives non showing name of P.W.8 as eye witness in inquest report is also a missing link."

41. Thus, the presence of P.W.8 (child), at the relevant time by the side of his mother, who was said to be in pool of blood, was considered doubtful. Non-seizure of blood stained clothes of P.W.8, the non-examination of P.W.8 on the very same day or on the next day, when P.W.1 to P.W.3 were examined, along with other blood relatives, and non-mentioning the name of P.W.8 as eye witness, in the inquest report, were the factors considered as a missing link. The statement of the child was recorded by the investigating officer four days after the incident. The reasons for such delay were not explained. The child's evidence was recorded after 1 ½ months gap by P.W.14, under Section 164 Cr.P.C. The court found discrepancy regarding the weapon used for commission of offence in the statement of the child recorded as P.W.8 and the one recorded before P.W.14. It observed that there was change in the statement of the child witness, from the one recorded under Section 164 Cr.P.C. He had stated that the father, beat the mother with a stick. But, as P.W.8, he deposed that his father beat his mother behind her head with a stick that had iron blade and blood oozed out, which was never stated

before the police or the Magistrate. P.W.8 also stated that the blade was inserted by the accused father, but the same was not stated before the police, and the Magistrate. The sessions court observed that the child witness came to the court on several occasions but did not give evidence. He was residing with his grandparents and P.W.3 (Kalyan Kumar) (respondent No.3 herein), accompanied him several times to the court along with P.W.2 (2nd respondent herein). The child was more prone to tutoring during his young age. The learned sessions court clearly recorded that, the evidence of the child witness was not totally reliable for want of corroboration.

42. Though, the learned Sessions Court has doubted the presence of the child at the time of the incident, and thus to be an eye witness and did not rely on the child testimony for want of corroboration. Its appreciation of evidence may be correct, but still we are not inclined to weigh this factor in favour of grant of custody to the father. The child may or may not be the eye witness of the incident and may or may not have deposed correctly or truthfully or deposed due to tutoring, but still the fact remains that the child actually deposed under Section 161 Cr.P.C in investigation, under Section 164 Cr.P.C before the

Magistrate, and also as a witness as P.W.8 in the Sessions Court, against the appellant-father implicating him to have murdered his wife (mother of the child) and the appeal against the order of acquittal is pending.

43. Learned counsel for the appellant placed reliance on the judgment in **Tejaswini Gaud** (supra) to contend that the custody of the child was given to the father being the only natural guardian alive, and therefore in the present case also the father being the natural guardian alive and mother having died the custody should be given to the appellant father.

44. In **Tejaswini Gaud** (supra)**,** the facts were that the marriage of the 1st respondent therein was solemnized with one Zelam. She gave birth to a child. During the period of her treatment for cancer, the child was with the father but when she had to be hospitalized suddenly for her treatment, the sisters of Zelam took the child to their residence. Later on she died. The child continued to be in the custody of the sisters. The father was denied custody, giving raise to the proceedings for child custody. Finally, the matter approached the Hon'ble Apex Court, wherein the Hon'ble Apex Court observed that, the father was the only natural guardian alive and he had neither abundant nor neglected

the child. Only due to the peculiar circumstances of the case, the child was taken care by the sister of Zelam. So the facts were different. The father had given custody of the child therein under the peculiar circumstances. There were no charge of murder or demand of dowry. There was no criminal case against the father. That is not a case of the father facing the criminal trial in respect of the unnatural death of the mother of the ward nor the ward was produced as a witness. Consequently, based on the judgment in **Tejaswini Gaud** (supra), the custody cannot be directed to be given to the father, on the ground of the father being the natural guardian. To reiterate its not the right of the natural guardian but the welfare of the ward which is of paramount consideration.

45. Learned counsel for the appellant placed much reliance in **Manchala Rushikesh** (supra) to contend that the appellant being the natural guardian unless there was something to show that he was unfit to be given the custody of the minor wards, the order of the learned court declining to grant custody cannot be sustained. He submitted that in **Manchala Rushikesh** (supra), a case was registered against the father, and the members of his family under Section 304-B IPC. The mother of the minor had committed suicide, as in the present case. He submitted that the

father was not found to be unfit, inspite of the case under Section 304-B IPC, being registered against him and the custody was given to the petitioner being the natural guardian.

46. In **Manchala Rushikesh** (supra), the Co-ordinate Bench of this court reiterated that the power of the court under Section 25 of the G.W.Act is to be governed primarily by the consideration of the welfare of the minor. The judicial discretion is to be exercised judiciously, in the background of all the relevant factors and circumstances. Each case has to be decided on its own facts, and other cases hardly serve as binding precedent, the facts of two cases, in this respect being seldom-if ever, identical. This Court further observed that in considering the question of the welfare of the minor, due regard has to be paid to the right of the father to be the guardian and also to all other relevant factors having a bearing on the minor's welfare. There is a presumption that a minor's parents would do their very best to promote the children's welfare and, if necessary would not grudge any sacrifice of their own personal interest and pleasure. This presumption arises because of the natural, selfless affection normally expected from the parents for their children. The father is the guardian of the minor until he is found unfit to be guardian

of the minor. The welfare of the minor is paramount consideration while ordering his custody. In view of Section 25 of the Act, the onus is on the person who opposes the application by a guardian for the custody of a ward to make out that the welfare of the ward be better served by its being kept out of the custody of its guardian and retained in the custody of the person against whom the application is made. This onus is particularly heavy when the guardian is the father of the child. It was observed that the burden of proof to deny the natural father the custody of his ward would be very heavy to establish his unfitness and the court will require very strong reasons for interference with the father's right to custody.

47. **Manchala Rushikesh** (supra), is a case seeking custody by the natural guardian, father. The learned trial court without giving any finding that the natural guardian was unfit to be the guardian of the minor child, had dismissed the petition. The Coordinate Bench of this Court found that there was nothing, out of the entire material on record, regarding unfitness of the father to be the guardian and no instance was indicated so as to deny the custody to the natural guardian, or to show that the interest of the minor would not be served if the custody was given to the

father. On such consideration, in totality of the facts and circumstances of that case, the order of the trial court was reversed and the custody of the minor was allowed to the father. A perusal of the judgment in **Manchala Rushikesh** (supra), shows that, the police after investigation had filed a final report. There appears to be a dispute of partnership business. The mother of the ward had demanded to settle the affairs of the factory. Being disgusted, she committed suicide. There was no dispute with the husband. The complaint was filed by the mother of the deceased against the father of the ward, in which, after completion of the investigation, the police came to the conclusion that the father was falsely implicated and filed the final report stating that it was a mistake of fact. We are therefore of the view that the facts of **Manchala Rushikesh** (supra) are distinguishable from the facts of the present case. Here, the mother of the minor died in the incident occurred at the house of the father, and the minor was produced as the eye witness against the father.

48. So far as the proposition of law in **Manchala Rushikesh** (supra) is concerned, there is no dispute that, it is not the right of the parties, to have the custody of the minor but the paramount consideration is the welfare of the minor. It is also not in dispute

that while considering the custody of the minor, the right of the natural guardian to have the custody is one of the factors to be considered, but in a correct perspective. The welfare of the minor shall always prevail over the right of the parties, in custody matter. If the welfare is not with the party having the right, the right of the party by itself cannot be the sole consideration or determinative, factor for giving custody even to the natural guardian.

49. Learned counsel for the appellant relied in **Anuj Sharma** (supra), and contended that after the death of the mother of the minor, he was forcibly abducted by the respondent therein. The father immediately filed the criminal complaint and also the proceedings for getting back the custody of the child and the custody was handed over to the father by the Court.

50. In **Anuj Sharma** (supra), the Rajasthan High Court observed that the appointment of a person as the guardian of the person of the minor is different from handing over the custody of the minor to a particular person. It refered to the judgment of the Hon'ble Apex court in Athar Hussain vs. Syed Siraj Ahmed & Ors (AIR 2010 Supreme Court 1417), and observed that the matter of guardianship lies in favour of the father under Section 19 of the

Act of 1890. Unless the father was not fit to be a guardian, the Court had no jurisdiction to appoint another guardian. The question of custody was said to be different from the question of guardianship. It was held that what is important and paramount is the welfare of the child, which would include material welfare; both in the sense of adequacy of resources to provide a pleasant home and a comfortable standard of living, in the sense of an adequacy of care, to ensure that good health and due personal care are maintained. The welfare of the child should not be measured by money or by physical comforts alone and while considering the welfare of the child, the ties of the affection of the father, who is the natural guardian could not be disregarded.

51. The proposition of law in **Anuj Sharma** (supra) that the case of custody is to be decided having regard to the totality of the facts and circumstances of the case, keeping in view of the paramount consideration of the interest and welfare of the minor, is not in dispute and is a settled proposition of law, reiterated all the times. But, based on the judgment in **Anuj Sharma** (supra), the appellant cannot claim custody as of right being the natural guardian. In **Anuj Sharma** (supra), the mother died on account of burn injuries. It was the case of the appellant therein that she

committed suicide. It does not appear to be a case of an FIR being lodged against the father of the ward. In the present case there is criminal case against the appellant and the minor was produced as an eye witness against the appellant.

52. We deem it appropriate to refer to the judgment of Hon'ble Apex Court in **Kirtikumar Maheshankar Joshi vs. Pradipkumar Karunashanker Joshi[12].** The father of the minor children was facing criminal trial under Section 498-A IPC in connection with the death of the mother of the children and as per the postmortem report, the cause of death was cardiac respiratory arrest due to some chemical poison. The police had recoded the statements of the children and after the death of the mother, the children had left father's house and went to live with their maternal uncle. The application for custody of children was filed by the father. The minor children were bitter about their father and narrated various episodes showing ill-treatment of their mother at the hands of their father. They categorically stated that they were not willing to live with their father. They also stated that they were very happy with their maternal uncle who was looking after them very well. The court observed that it would not be in the interest and welfare

[12] (1992) 3 SCC 573

of the children to hand over their custody to their father. In the context of the father being a natural guardian and a preferential right to the custody of his minor children, the Hon'ble Apex Court, observed that, keeping in view the facts and circumstances of the case and wish of the children, it was not inclined to hand over the custody of the minor children to their father, at that stage. So, the father, though natural guardian was denied custody which was continued with the maternal uncle, in the interest and welfare of the child.

53. Para 7 of **Kirtikumar Maheshankar Joshi** (supra), is reproduced as under:

> "7. Pursuant to our order dated March 27, 1992 the children namely, Vishal and Rikta are present before us in these chamber-proceedings. Their maternal uncle Kirtikumar and their father Pradipkumar are also present. Vishal and Rikta both are intelligent children. They are more matured than their age. We talked to the children exclusively for about 20/25 minutes in the chamber. Both of them are bitter about their father and narrated various episodes showing illtreatment of their mother at the hands of their father. They categorically stated that they are not willing to live with their father. They further stated that they are very happy with their maternal uncle Kirtikumar who is looking after them very well. We tried to persuade the children to go and

> live with their father for some time but they refused to do so as at present. After talking to the children, and assessing their state of mind, we are of the view that it would not be in the interest and welfare of the children to hand over their custody to their father Pradipkumar. We are conscious that the father, being a natural guardian, has a preferential right to the custody of his minor children but keeping in view the facts and circumstances of this case and the wishes of the children, who according to us are intelligent enough to understand their well-being, we are not inclined to hand over the custody of Vishal and Rikta to their father at this stage."

ii) G & W.C.No.101 of 2018:

54. G & W.C.No.101 of 2018 was filed by the respondents in the court of the III Additional Principal Judge, Family Court at Bangalore, to appoint them as guardian of the ward, and is said to be pending. In that case, the appellant (respondent therein) filed I.A.No.10 of 2018 under Section 12 of the G & W. Act, seeking visitation rights which was opposed by the respondents herein and was dismissed vide order dated 23.04.2024, recording at least two material aspects. One is the photographs of the child (ward) and the other, unwillingness of the child to go with the father. The first we would consider under the present head and the second under the head of preference of child.

55. Relevant part of paras 11 and 12 of the order dated 23.04.2024 reads as under:

> "11. It is an admitted fact that the criminal case was registered against the respondent for the offense punishable u/section 498-A, 302, 201 R/w Sec. 34 IPC and it has ended in acquittal. The fact that the mother of the ward Surays's Jyothi Manohar suffered to the severe head injury and succumbed to the severe injury. The certified copy of the judgment passed in S.C.No.207/2018 has been produced before the court and the contents of the said judgment clearly shows that she suffered grievous injury on the back of her head and later succumbed to the injuries. Merely, for the reason that the respondent is acquitted in the criminal case registered against him in SC No.207/2018, as a matter of right he will not become entitled for having visitation rights to the child for the reason that he is biological father of the child. Welfare and wellbeing of the child is the paramount point for consideration and not rights of father. Admittedly the respondent withdrawn the petition filed by him in GWOP No.79/2018 during the pendency of the criminal case against him in SC No.207/2018. Admittedly, after the disposal of SC No.207/2018 the respondent filed the petition in GWOP No.13/2020. Certified copy of the orders passed in GWOP No.13/2020 dated 12.12.2022 is produced before the court and it is marked as Ex.P.14. The copy of the order shows that the petition filed by the respondent u/sec.9, 10 and 25 of G & W Act, seeking for direction to the respondent (petitioner in this case) to hand over the custody of the minor child in his favour and it came to be dismissed. The observation

made in the orders passed in GWOP No.13/2020 clearly shows that the court after holding interaction with the child clearly concluded that the child expressed his unwillingness to go with his biological father and expressed his willingness to stay with his maternal grandparents and uncle.

The observation made by the court in the judgment passed in GWOP No.13 of 2020 in para No.18 also needs to be taken into consideration. The ward expressed his unwillingness to meet his father from that date to till date.

12. The learned advocate for petitioner during the course of arguments submitted that on the date of incident in which his mother was killed i.e on 4.9.2017, the child was with his mother, even an attack was also made to strangulate the child. Luckily the child survived. The learned advocate for petitioners referred to the photographs produced before the court in support of their case along with para No.5 of the affidavit filed in support of I.A.No.10. In the facts and circumstances of the case on hand, welfare and wellbeing of the child is the paramount. Merely for the reason that the respondent is the biological father of the child, he will not become entitled to visit the child against the will and wish of the child in the facts and circumstances of the case on hand. The rights of the parties will not prevail over the welfare and wellbeing of the child. Importance shall be given to the comfort, health, wellbeing, likes and dislikes of the child in the present facts and circumstances of the case on hand. Though, the respondent being biological father will have preferential right to the child. In view of his close relationship with the ward, request and willingness of the child to stay with his maternal grandparents and uncle and his

> unwillingness to even to see the respondent needs to be taken into consideration. Likes and dislikes of the child cannot be ignored. Merely for the reason that the respondent is the biological father, the child cannot be pressurized or compelled to visit the father against the will and wish of the child. The unwillingness of the child to visit the father needs to be taken into consideration, in the circumstances of the case on hand, the gravity of allegations made against the respondent with respect to the death of his wife/mother of the child, photographs relied upon by the petitioners to substantiate their allegations, the strangulate marks that can be seen in the photographs of the child also needs to be taken into consideration. Custody and visitation of the minor child cannot be decided on the basis of the rights of the parties, ignoring the welfare and well being of the child."

56. The photostat of the photo of the child, filed in G & W.C.No.101 of 2018, considered in the order dated 23.04.2024, have been brought on record, of this appeal by memo dated 01.10.2024. The said photographs, as printed, bear date 09.09.2017. The death of the child's mother is in the incident dated 04.09.2017. Whether, these photographs were filed, in the criminal case S.C.No.207 of 2018 on the file of IV Additional Sessions Judge, Ananthapuram, or/and any complaint against the father for the alleged strangulation, causing such marks on the neck of the child as in the photographs, was lodged, and

whether the child was given any treatment by any doctor for any such alleged injury to the child, has not been pointed out to us, in the present appeal. But, on bare seeing of the photographs there appears to be marks of injury round the neck of the child. There is proxity between the dates of incident and of the photographs. The possibility of the marks being the marks of strangulation as observed by the Family Court, Bangalore cannot be ruled out. We, however, make it very clear that, we are not expressing any conclusive opinion neither with respect to the observations made by the Family Court, Bangalore, nor with respect to the nature of the marks on the neck of the ward, as can be seen in the photographs, to be the strangulation marks. We are also not observing that those marks are real nor that not real. But, only for the purposes of this appeal considering the custody matter, the photographs of the child as they are, we take it as a relevant factor and cannot ignore the same, which prima facie goes against the appellant for giving custody to him and being considered as against the welfare of the minor.

iii) G.W.O.P.No.79 of 2018:

57. So far as the submission of the learned counsel for the respondents that the father appellant did not show interest, in the

minor is concerned, the facts show that the appellant previously filed G.W.O.P.No.79 of 2018 for custody of the child, which was got withdrawn, for the reason as submitted by the appellant's counsel that, the assurance was given by the respondents, to hand over the custody of the ward to the appellant, though any such assurance was disputed by the respondents counsel. The appellant then filed G.W.O.P.No.13 of 2020 for custody, which having been dismissed, the present appeal has been filed. Previously, he also filed I.A.No.10 of 2018 seeking visitation right, in G.W.O.P.No.101 of 2018 filed by the present respondents. The appellant, filed W.P.No.16271 of 2024 which was dismissed by the High Court of Karnataka. So, since 2018, the appellant is making efforts for custody/visitation rights of his son. Further, with respect to the contention of the respondents' counsel that the appellant did not visit the child in past many years, it is obvious that when the criminal case filed by the respondents was pending against the appellant and the ward was in the custody of the respondents, the appellant could not be expected to visit the respondents to see his child. What he could do, he did by taking recourse to the legal proceedings. We therefore, do not find force in the submission of the respondents' counsel that the appellant

did not show any interest in the child, for his custody or to meet him or that there was want of bonafides.

58. In **Muthuswami Chettiar** (supra) upon which learned counsel for the respondents placed reliance the Madras High court observed that if a minor has for many years from a tender age lived with grandparents or other near relatives and has been well cared for and during that time the minor's father did not show interest in the minor, those circumstances were of great importance. They bear both upon the question of the interests and welfare of the minor and on the bona fides of the person seeking custody. **Muthuswami Chettiar** (supra) was laid much emphasis to contend that the appellant had not shown any interest in the minor, for last so many years. We for the consideration made above, are of the view that **Muthuswami Chettiar** (supra) is not applicable on the point cited, though, on law there cannot be any dispute.

iv) CHILD'S PREFERENCE:

59. In **Nil Ratan Kundu** (supra), the Hon'ble Apex Court observed that the examination of the minor also helps the court in performing onerous duty in exercising discretionary jurisdiction and in deciding delicate issue of custody of a tender-aged child.

The court must consider the preference of the child if he is old enough to form an intelligible preference. The Apex Court, however, further added that, the final decision rests with the Court, which is bound to consider all questions and to make an appropriate order keeping in view the welfare of the child.

60. In G.W.O.P.No.13 of 2020 on 30.08.2020, which is recorded in the impugned order dated 12.12.2022 in para No.18, the child stated that *"…….. he wants to stay with the respondents and he do not want to go with the petitioner……. The court tried to convince the ward to go along with the father but the ward not convinced."*

61. As per the order dated 23.04.2024 in I.A.No.10 of 2018 in G & W.C.No.101 of 2018, during the interaction with the child, he stated that he was comfortable with his maternal uncle and maternal grandparents and expressed his willingness not to see the father, stating that, the father killed the mother. The ward expressed danger and asked the court not to send him with his father and started crying. Considering the unwillingness of the child to visit the father and the gravity of the allegations made against the father with respect to the death of his mother, the learned court rejected the I.A.No.10 of 2018.

62. The relevant part in para 11 of the order reads as under:

> "In this case also during interaction with the child the ward Master Surya Srivastav clearly stated that he is comfortable with his Mama and grandparents and the child expressed his willingness even to see the respondent/father stating that he killed his mother hitting her with the hind portion of the axe on the hind portion of her head. The ward apprehends danger from the respondent and humbly requested the court not to send him with his father and started crying."

63. The appellant filed W.P.No.16271 of 2024 on the file of the High court of Karnataka, challenging the order dated 23.04.2024 of dismissal of his application for visitation rights. The High Court of Karanataka, on 25.09.2024 directed the maternal grandparents to produce the child, to interact with him. The child was produced on 22.10.2024. The High Court, passed the order dated 22.10.2024, that the child refused to go with his father and when his father was called, he started crying not to call his father. The child was not willing to go with the father.

64. The orders dated 25.09.2024 and 22.10.2024 in W.P.No.16271 of 2024, read as under:

> **25.09.2024:**
>
> "The Trial Court had dismissed the application filed by the father seeking visitation. Learned counsel for the respondents submits that the boy is not interested to see the father as he has been an eye witness to the

incident where the mother had lost her life. Considering all this, this Court deems it appropriate to interact with the child.

Post this matter on 22.10.2024 at 2.00 p.m. in the chambers.

The grandparents, father and the child shall be present before the Court on the next date of hearing."

22.10.2024:

"Pursuant to the order dated 25.09.2024, the grandparents, father and child appeared inChamber. The Court asked the child whether the child is willing to go with the father. He stated that the father killed his mother and he is an eye witness to the said incident and also gave an evidence in Sessions Case No.207/2018 on the file of IV Additional District and sessions Judge-cum-Spl. Judge for Trial of Offences against Women, Anantapuramu. He refused to go with his father and when his father was called, he started crying not to call his father. From the conduct of the child, the child is not willing to go with the father."

65. Under the aforesaid circumstances, we did not consider it appropriate nor necessary to call the child again to know the child's preference, which is evident. However, as observed by Hon'ble the Apex Court in **Nil Ratan Kundu** (supra), the court exercising parens patriae jurisdiction is the final authority to best

consider the welfare of the minor on weighing of the various circumstances.

v) OTHER RELEVANT FACTORS:

66. The learned trial court has recorded that the respondents are very well looking after the child for his needs, education, health and future. The child is also happy in the company of the respondents. The respondents have financial capacity. On the above aspect any contrary submission has not been made. With respect to the appellant, having financial capacity to maintain the child, also, no contrary submission has been made by the respondents. Consequently, on the above aspect it cannot be said that the welfare of the child is not in the custody of the respondents.

67. The appellant may be in a position to maintain the child and to look after his welfare and may be in a better position as was argued, but keeping in view the overall factors, and being concerned about the safety and security of the child, in our view it would not be in the welfare of the child at least, at present, to hand over his custody to the appellant. The impression in the child's mind for the last seven years is against his father. The

child is in the custody of the maternal grandparents, and uncle without any complaint.

CONCLUSION POINT-A:

68. We thus conclude on Point-A, that **i)** the welfare of the child is being looked after by the respondents. **ii)** they have got the child admitted in a good school where he is studying. **iii)** the child is with the respondents for the last more than seven years and is living happily. **iv)** the maternal-grandfather has fixed an amount of Rs.5,00,000/- for his future in Fixed Deposit Receipts, evidencing concern about the child's care, welfare and future, **v)** the respondents have the financial capacity to maintain the child **vi)** there is nothing on record to show that the respondents are not taking care of the child properly, and **vii)**. the child expressed his unwillingness to go with the father **a)** before the III Additional Principal Judge, Family Court, Bangalore in G & W.C.No.101 of 2018 which has been recorded in the order dated 02.04.2018, **b)** before the learned single Judge of the Karnataka High Court in W.P.No.16271 of 2024, and **c)** in G.W.O.P.No.13 of 2020. In consideration of the above factors, with that **i)** the child deposed against the father in the incident of his mother's death under Section 161 Cr.P.C, under Section 164 Cr.P.C and as witness

(P.W.8) in Sessions Case; **ii)** the photographs of the child and, **iii)** Criminal Appeal against the order of acquittal is pending, we hold that, the welfare of the child will not be in the custody of the father appellant. He cannot be given custody of the ward from the custody of the respondents and as witness (P.W.8) in Sessions Case.

POINT-B:

69. In view of our conclusions of Point-A, we hold on Point-B, that, the order dated 12.12.2022, passed by the learned Principal District Judge, Ananthapuram, does not suffer from any illegality on the point of custody.

70. But, we would add that the learned Principal District Judge, Ananthapur must have considered about the visitation rights of the father-appellant. We therefore proceed to consider the same.

VISITATION RIGHTS:

71. In ***Yashita Sahu v. State of Rajasthan***[13] the Hon'ble Apex Court held that even if the custody is given to one parent, the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two

[13] (2020) 3 SCC 67

parents. It is only in extreme circumstances that one parent should be denied contact with the child. Reasons must be assigned if one parent is to be denied any visitation rights or contact with the child. Courts dealing with the custody matters must while deciding issues of custody clearly define the nature, manner and specifics of the visitation rights.

72. It was observed that the child is the victim in custody battles. In this fight of egos and increasing acrimonious battles and litigations between two spouses, the parents who otherwise love their child, present a picture as if the other spouse is a villain and he or she alone is entitled to the custody of the child. The Hon'ble Apex Court in ***Yashita Sahu*** (supra) emphasized that a child, especially a child of tender years requires the love, affection, company, protection of both parents. This is not only the requirement of the child, but is his/her basic human right. Just because the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents. A child is not an inanimate object which can be tossed from one parent to the other. Every separation, every reunion may have a traumatic and psychosomatic impact on the child.

73. The Hon'ble Apex Court further observed that most Courts while granting custody to one spouse do not pass any orders granting visitation rights to the other spouse, and also that a child has a human right to have the love and affection of both the parents and courts must pass orders ensuring that the child is not totally deprived of the love, affection and company of one of her/his parents.

74. In **Yashita Sahu** (supra), the Hon'ble Apex Court further observed that in addition to the visitation rights, contact rights are also important for development of the child. The concept of contact rights in the modern age would be contact by telephone, e-mail or in fact, the best system of contact, if available between the parties should be video calling. It was emphasized that the courts dealing with the issue of custody of children must ensure that the parent who was denied custody of the child should be able to talk to her/his child as often as possible. Unless there are special circumstances to take a different view, the parent who was denied custody of the child should have the right to talk to his/her child for 5 to 10 minutes every day. This will help in maintaining and improving the bond between the child and the parent who was denied custody. If that bond is maintained, the

child will have no difficulty in moving from one home to another during vacations or holidays. The purpose of this is, if one cannot provide one happy home with two parents to the child then let the child have the benefit of two happy homes with one parent each.

75. Paras-20 to 24 of ***Yashita Sahu*** (supra) deserve reproduction as under:

> "**20.** It is well settled law by a catena of judgments that while deciding matters of custody of a child, primary and paramount consideration is welfare of the child. If welfare of the child so demands then technical objections cannot come in the way. However, while deciding the welfare of the child, it is not the view of one spouse alone which has to be taken into consideration. The courts should decide the issue of custody only on the basis of what is in the best interest of the child.
>
> **21.** The child is the victim in custody battles. In this fight of egos and increasing acrimonious battles and litigations between two spouses, our experience shows that more often than not, the parents who otherwise love their child, present a picture as if the other spouse is a villain and he or she alone is entitled to the custody of the child. The court must therefore be very wary of what is said by each of the spouses.
>
> **22.** A child, especially a child of tender years requires the love, affection, company, protection of both parents. This is not only the requirement of the child but is his/her basic human right. Just because the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents. A child is not an inanimate object which can be tossed from one parent to the

other. Every separation, every reunion may have a traumatic and psychosomatic impact on the child. Therefore, it is to be ensured that the court weighs each and every circumstance very carefully before deciding how and in what manner the custody of the child should be shared between both the parents. Even if the custody is given to one parent, the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents. It is only in extreme circumstances that one parent should be denied contact with the child. Reasons must be assigned if one parent is to be denied any visitation rights or contact with the child. Courts dealing with the custody matters must while deciding issues of custody clearly define the nature, manner and specifics of the visitation rights.

23. The concept of visitation rights is not fully developed in India. Most courts while granting custody to one spouse do not pass any orders granting visitation rights to the other spouse. As observed earlier, a child has a human right to have the love and affection of both the parents and courts must pass orders ensuring that the child is not totally deprived of the love, affection and company of one of her/his parents.

24. Normally, if the parents are living in the same town or area, the spouse who has not been granted custody is given visitation rights over weekends only. In case the spouses are living at a distance from each other, it may not be feasible or in the interest of the child to create impediments in the education of the child by frequent breaks and, in such cases the visitation rights must be given over long weekends, breaks and holidays. In cases like the present one, where the parents are in two

> different continents, effort should be made to give maximum visitation rights to the parent who is denied custody."

76. We are not oblivious that **Yashita Sahu** (supra) is a case for custody between father and mother of the ward. But still the principles laid down would apply with equal force to the present case as well, as they pertain to the welfare and wellbeing of the ward considering his overall development and not to be deprived of love and affection of any one of the parents, which is his basic human right. So, even if there is one parent alive and the contest is between that parent and third person, the visitation rights to the party denied custody, deserves to be considered.

77. In **Kirtikumar Maheshanker Joshi** (supra), the custody of the children was denied to the father, who was facing the criminal charge under Section 498-A IPC, in which the statement of the children was recorded by the police. The Hon'ble Apex Court granted visitation rights to the father. Those directions in para 7 are as follows:

> "…….We, therefore, dispose of the appeal by issuing the following directions:
>
> (I) We hand over the custody of Vishal and Rikta, the minor children of Pradipkumar and Kumudlata deceased,

> to the appellant Kirtikumar who is the maternal uncle of the children.
> (II) Pradipkumar, father of the children, shall be permitted by the appellant to meet the children on holidays or on any other day with prior notice to the appellant. Pradipkumar can take the children out of the appellant's house for recreation, entertainment or for shopping with the concurrence of the children."

78 In **Tejaswini Gaud** (supra), though the custody was denied to the appellants therein and was given to the father but the appellants therein were granted the right to access to the child initially for three months for a specified time with the directions and the conditions imposed. Paras 36 and 37 of **Tejaswini Gaud** (supra) read as under:

> "36. The appellants submit that handing over of the child to the first respondent would adversely affect her and that the custody can be handed over after a few years. The child is only 1½ years old and the child was with the father for about four months after her birth. If no custody is granted to the first respondent, the court would be depriving both the child and the father of each other's love and affection to which they are entitled. As the child is in tender age i.e. 1½ years, her choice cannot be ascertained at this stage. With the passage of time, she might develop more bonding with the appellants and after some time, she may be reluctant to go to her father in which case, the first respondent might be completely deprived of her child's love and affection. Keeping in view the welfare of the child and the right of the father to have her custody and after consideration of all the facts and circumstances of the case, we find that the High Court was right in holding that the welfare of the child will be best served by handing over the custody of the child to the first respondent.
>
> 37. Taking away the child from the custody of the appellants and handing over the custody of the child to the

> first respondent might cause some problem initially; but, in our view, that will be neutralized with the passage of time. However, till the child is settled down in the atmosphere of the first respondent-father's house, the appellants No.2 and 3 shall have access to the child initially for a period of three months for the entire day i.e. 08.00 AM to 06.00 PM at the residence of the first respondent. The first respondent shall ensure the comfort of appellants No.2 and 3 during such time of their stay in his house. After three months, the appellants No.2 and 3 shall visit the child at the first respondent's house from 10.00 AM to 04.00 PM on Saturdays and Sundays. After the child completes four years, the appellants No.2 and 3 are permitted to take the child on every Saturday and Sunday from the residence of the father from 11.00 AM to 05.00 PM and shall hand over the custody of the child back to the first respondent-father before 05.00 PM. For any further modification of the visitation rights, either parties are at liberty to approach the High Court."

79. In **S. Nishath vs. S. Shajila Beevi alias Shasila**[14]**,** the Madras High Court granted the limited visitation rights under the supervision in the court premises of Sub-court/District Munsif Court at Kuzhithurai. Relevant part of para No.7 in **S. Nishath** (supra) reads as under:

> "7……In Black's Dictionary step-up-visitation theory is contemplated and the same is extracted hereunder for ready reference:
>
> "Visitation.
>
> 1. Inspection; superintendence; direction; regulation.
>
> 2. A relative's esp. a noncustodial parent's, period of access to a child. - Also termed parental access; access; parenting time; residential time.

[14] 2012 SCC OnLine Mad 5094

> 3. The process of inquiring into and correcting corporate irregularities.
>
> 4. Visit.
>
> Grandparent visitation. A grandparent's court-approved access to a grandchild. The Supreme Court recently limited a grandparent's right to have visitation with his or her grandchild if the parent objects, citing a parent's fundamental right to raise his or her child and to make all decisions concerning the child free from state intervention absent a threat to the child's health and safety.
>
> Restricted visitation. See Supervised visitation.
>
> Stepped-up visitation. Visitation, usu. For a parent who has been absent from the child's life, that begins on a very limited basis and increases as the child comes to know the parent. - Also termed step-up visitation.
>
> Supervised visitation. Visitation, usu. Court-ordered, in which a parent may visit with the child or children only in the presence of some other individual. A court may order supervised visitation when the visiting parent is known or believed to be prone to physical abuse, sexual abuse, or violence. - Also termed restricted visitation."

80. In **Master Vedant Mishra Thruh, Father Amritanshu Mishra vs. State of U.P Thru Prin. Secretary, Home Department, Lucknow and others**[15]**,** the Allahabad High Court though denied the custody to the father facing trial for the murder of the mother of the ward, but allowed the visiting rights.

81. Recently, in **Ruhi Agrawal and another vs. Nimish S. Agrawal**[1]**,** the learned Family Court granted sole custody of the

[15] 2023 SCC OnLine All 4233

child to the mother, and the father was awarded limited visitation rights. The High Court, maintained the sole custody with the mother but extended the father's visitation rights and allowed longer meeting hours, physical meetings on a fortnight basis, shared vacation time, and regular video calls to promote a meaningful bond between the father and the child. The modified arrangement made by the High Court was challenged. The Hon'ble Apex Court, emphasised the need for both the parents to cooperate and communicate effectively to ensure the smooth implementation of the visitation arrangements. Observing that, the mutual respect and collaboration are essential for the child's wellbeing, the Hon'ble Apex Court made visitation arrangements, keeping in view the safety and welfare of the child.

82 Paras 13 to 19 of **Ruhi Agrawal** (supra) read as under:

> "13. We emphasize the need for both parents to cooperate and communicate effectively to ensure the smooth implementation of the visitation arrangement. Mutual respect and collaboration are essential for the child's well-being.
>
> 14. Since both the parties have made severe allegation against each other to bring forth their individual concerns for the physical safety and

mental wellbeing of the child while in the company of the opposite parent, we will not go into the merits of these allegations as several cases are still pending between the parties and we are yet to hear the petition on merits. But, keeping the safety and welfare of the child as paramount, we believe that these submissions cannot be taken lightly. Petitioner no.1 has urged before us that she should be allowed to be present during the meetings to ensure the child's safety, whereas the respondent has contested against such arrangement on the grounds that petitioner no.1 tends to control petitioner no.2 and thus does not allow the visits to go smoothly and without interruption.

15. Owing to the circumstances and the allegation in the present case, we do not deem it appropriate to allow petitioner no.1 to be present during the visitation meetings that will take place during the pendency of this petition. But we understand the concerns of a mother of a teenage daughter, especially one who has made serious allegations against her husband. Thus, as urged by petitioner no.1 that the safety of the child be ensured and as suggested by the respondent, we deem it appropriate that a Court appointed Commissioner, who shall be a female, shall be present at all times during the visitation meetings.

16. Such an arrangement strikes a fair balance between the child's need for stability, her safety

and welfare, and the respondent's right to meaningful involvement in the child's life. Both parents are reminded of their duty to prioritize the child's welfare and work collaboratively to create a nurturing and supportive environment for the child.

17. After careful consideration of the submissions, we find no reason to not allow the abovementioned visitation rights to continue in the interim.

18. During the pendency of the petition before this Court, we deem it appropriate to allow the following visitation arrangements made by the High Court to continue:

i. The father or grandparents would be able to engage with the child on a suitable video conferencing platform for one hour every Saturday and Sunday and 5- 10 minutes on other days.
ii. Both the father and the mother in order to facilitate the video conferencing in between shall procure smart phones which would facilitate the inter-se video calling.
iii. Since both the parties are living in the same district, it is directed that on a fortnight basis on the working Saturday the child would be produced before the Family Court, Durg at about 10:30 AM to 11:00 A.M. by the wife. Wherefrom the child may be taken by the husband for the entire day and shall be returned in between 4:30 PM to 5:00 pm

> before the family Court to enable the mother to get back the custody.
>
> iv. During the vacation, the child would be entitled to be in the company of father/grandparents, initially for a period of one day from 9.00 a.m. to 9.00 p.m.
>
> It is directed that the visitation rights mentioned in clause (iii) and (iv) above shall be exercised only in the presence of a court appointed Commissioner, who shall be a female. The custody of the child shall be taken by the respondent in the morning and returned to the petitioner no.1 in the evening, in the presence of the court appointed Commissioner. Further, the Commissioner shall be present at all times during the course of the visitation meetings, which shall take place in a public place only.
>
> 19. Thus, we modify the interim visitation rights only to the above extent of requiring the presence of a female court Commissioner who shall be appointed by the Family Court at Durg, Chhattisgarh within four weeks from the date of this order."

83. In **Ruhi Agrawal** (supra), the mutual respect of the contesting parties and their collaboration being essential for the child's wellbeing were emphasised. That was a case between the parents, father and the mother, for custody/visitation rights.

The present is a case between the father and the maternal-grand-parents and uncle, but for the wellbeing of the child, the mutual respect and collaboration between the contesting parties, is essential and both the parties must understand this. The concern of the respondents, that, the child deposed against the father, during investigation, before the Magistrate and in Sessions Court as also the pendency of the criminal appeal are relevant factors and they can be addressed, by granting restricted and supervised visitation meetings. We also find from the judgment of the Sessions Court that, the child (P.W.8) deposed that *"Earlier he had love and affection towards his father ….."though he added…."but not now."* The misunderstandings or wrong impressions, may be for any reason, tutoring, living separately for long or otherwise, may get removed. The visitation rights can be allowed with restrictions and imposing conditions in the hope that, with the passage of time the bond between the father and son, may develop. We are of the view that after acquittal the father, ordinarily, should not be deprived of the love and affection of the child or of his company, restricted and supervised, keeping in view the observations made and the spirit of the judgments in **Kirtikumar Maheshanker Joshi** (supra) and **Ruhi Agrwal**

(supra), so that the father may also get an opportunity to win over the love and affection of the child, by his acts, conduct behivour and sharings. Let the understandings be better between the parties for overall development of the child.

84. We allow restricted and supervised visitation rights to the appellant by issuing the directions as under:

i) The appellant (father) is permitted to visit/meet the child (son) namely Master Surya Srivastav, twice in a month on 1st Saturday and 3rd Saturday, for two hours during 1.00 p.m to 3.00 p.m.

ii) The place would be the Family Court at Ananthapur.

iii) The respondents shall ensure the presence of the child (ward) on the aforesaid days, place and time.

iv) The appellant shall not be permitted to take the child outside the premises of the place of meeting.

v) The appellant shall behave like a responsible father. He would not cause any embracement to the child nor hurt his feelings.

vi) The respondents shall not create any obstruction or cause inconvenience to the appellant to meet the child and being in the company of the child.

vii) The paternal grandparents shall also be at liberty to meet grandchild on the days and time specified. The same restrictions as with respect to the appellant shall be applicable to them also.

viii) The visitation shall be in the supervision of the learned Judge, Family Court. He may himself be present for visiting hours or part thereof and/or may depute a responsible officer to remain present.

ix) The learned Judge, Family Court shall have all the powers to arrange for ensuring the safety and security of the child in the Family Court premises for which considering the necessity, he may request the local police to depute one/two police constables. Upon such request, the concerned Station House Officer shall provide the police constable who shall be in civil uniform.

x) Any other person, shall not be permitted in the meeting room except as per this order.

xi) The learned Judge, Family Court shall submit the report of every visitation, to this Court through the Registrar (Judicial) of this Court, in a sealed cover which shall be placed on the record of this appeal.

xii) The appellant and the paternal grandparents shall also be permitted to engage with the child on a suitable video conference platform for one hour on every Sunday preferably between 2.00 p.m to 4.00 p.m.

xiii) In order to facilitate the video conferencing between the child and the appellant and the grandparents, the appellant shall provide smart phone to the child.

xiv) These arrangements are initially made for a period of three months from 1st May, 2025.

xv) On expiry of such period, this Court exercising parens patriae jurisdiction, will review and consider the extension, expansion or otherwise of the visitation rights allowed vide this judgment.

85. We do not find any reason to interfere with the judgment of the learned court, for the discussion made on the point of custody

but we allow the visitation rights with the aforesaid directions and observations. The appeal for the custody is dismissed.

86. Before parting, we would like to reiterate the settled principle of law, that no order of custody of the ward is final and conclusive. It is always liable to further judicial scrutiny and modification by the court depending on proof of substantial changes in the circumstances that occur in the growing life of the ward and the guardian. When occurrence of substantial changes is brought to the notice of the court, it is bound, inappropriate cases to modify the orders of custody, no matter the original petition itself has culminated in a decree for permanent custody and the proceedings before the Court has come to a logical conclusion.

87. No order as to costs.

88. Let a copy of this judgment be sent to the Principal District Judge, Ananthapur and also to the Judge, Family Court, Ananthapur.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RAVI NATH TILHARI, J

CHALLA GUNARANJAN, J

Dated:10.04.2025
Note:
L.R copy to be marked.
B/o.Gk

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

THE HON'BLE SRI JUSTICE CHALLA GUNARANJAN

C.M.A.No.247 of 2023

Date:10.04.2025.

Gk.