

GAHC010001142022



2025:GAU-AS:7421-DB

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRL.A(J)/6/2022

Sadnam Rabha @ Satram Rabha

.....*Appellant*

-Versus-

The State of Assam

.....*Respondent*

Advocates :

Appellant : Mr. A. Kalita, Amicus Curiae.

Respondent : Mr. R. R. Kaushik,
Additional Public Prosecutor.

Date of Hearing : **29.05.2025**

Date of Judgment & Order : **06.06.2025**

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

JUDGMENT & ORDER (CAV)

[*Y. Longkumer, J*]

This is a criminal appeal from Jail under Section 383 CrPC against the

Judgment and Order dated 18.01.2018 passed by the Session Judge, Kamrup, Amingaon in Session Case No. 257/2014, which arose out of GR Case No. 13219/13 in Palashbari P.S Case No. 376/13 under Section 302 IPC. By the Judgment and Order dated 18.01.2018 the accused/appellant has been convicted for the offence under Section 302 IPC and he has been sentenced to undergo imprisonment for life with a fine of Rs. 5000/-, and a default clause to undergo another period of two months simple imprisonment.

2. The First Information Report (FIR) was lodged before the O.C. of Palashbari P.S on 10.11.2013 by one Bikram Kachari/informant/ PW-1. In the FIR it was stated that the daughter of the informant was married to the accused/appellant. The accused/appellant along with his family had been residing in a house constructed at some distance from the informant's house for about three years. On 09.11.2013 the accused/appellant killed his wife (informant's daughter) by hacking her with a dao inside his house. His grand daughter Purnima Rabha is a minor girl, aged about 4 years, who was present at her home at that relevant time, came to the house of the informant and told them in tears that her father had beaten her mother. He along with his family went there and saw cuts on the neck and cheek of his daughter and found her dead. The accused/appellant had escaped from his house after killing his wife.

3. On receipt of the information from one Debajit Rabha, ARSU (All Rabha Students Union) President over the phone, the Officer-in-Charge of Palashbari P.S registered a G.D. Entry No. 285 dated 09.11.2013 at 6:45 pm and thereafter, after receipt of the formal FIR a case was registered, being Palashbari P.S Case No. 376/13 under Section 302 IPC on 10.11.2013.

4. The post mortem examination on the dead body of the deceased was performed at Guwahati Medical College on 10.11.2013. After completing the investigation into the case the I.O./PW-11 submitted a chargesheet under Section 173 CrPC vide chargesheet No. 272/13 on 23.12.2013 having found a prima facie case for the offence under Section 302, IPC against the appellant/accused.

5. The appellant was produced from jail custody before the committal court on 01.04.2014. As the chargesheet was submitted against the appellant under Section 302 IPC, which is exclusively triable by the Court of Sessions, the learned committal court vide an order of commitment dated 01.04.2014, committed the case records of GR 13219/13 to the Court of Sessions, Kamrup, Amingaon. On 01.04.2014 the learned committal court also appointed a State defence counsel to conduct the case for the accused/appellant as he expressed his inability to engage an advocate to defend his case.

6. On receipt of the case records of GR Case No. 13219/13, the Court of Sessions registered the same as Session Case No. 257/2014. Thereafter, the case of the prosecution was opened by the learned Public Prosecutor and after hearing the learned Public Prosecutor and the learned Defence Counsel and upon perusal of the materials on records the learned trial court proceeded to frame the charge under Section 302 IPC against the accused/ appellant.

7. After framing the charge, the charge was read over and explained to the appellant to which, he pleaded not guilty and claimed to be tried. During the course of the trial the prosecution examined 11 witnesses and exhibited 11 documents and one Material Exhibit.

8. After closure of evidence from the prosecution side, the appellant was examined under Section 313 CrPC. The plea of the appellant in reply to the questions put to him under Section 313 CrPC was of denial, when asked, the appellant declined to adduce any evidence in his defence. However, he tried to put forward a plea of alibi by stating that he was not at the place of occurrence but in his own house at Chhaygaon village. After hearing the learned counsels for the parties and after evaluation of the evidence on record, the learned trial court proceeded to convict and sentence the appellant as mentioned above.

9. We have heard Mr. A. Kalita learned Amicus Curiae for the appellant and Mr. R. R. Kaushik , learned Add. Public Prosecutor for the State of Assam.

10. Mr. A. Kalita, learned Amicus Curiae appearing for the appellant has submitted that none of the prosecution witnesses had seen the incident. The only eye witness in this case is the PW-9/child witness. It was only the PW-1/informant and PW-7/brother of the deceased who deposed that Purnima the minor daughter of the deceased came to tell her grandfather/ PW-1 that her father had cut her mother. PW1 and PW7 being family members of the deceased would be interested witnesses. Among the other PWs it was only the PW6 who stated that he saw Purnima, the daughter of the appellant crying and telling the informant that her father had cut her mother. However, in his deposition, he stated that he saw the daughter of the accused in front of the house of the appellant telling the informant about the incident which is contradictory to the deposition of PW1 and PW7 who deposed that the minor daughter of the appellant had come to their house crying and told them that her mother was cut by the appellant. Learned Amicus Curiae, further submits that none of the neighbours, PW5, PW6 or PW8 asked anything to the minor daughter/PW9 and

they deposed that PW9 did not tell them anything about the incident. Learned Amicus Curiae also states that the PW9/daughter of the appellant was not listed as a prosecution witness when the chargesheet was submitted. It was only later during the trial that the Public Prosecutor submitted an application before the court to bring the PW9 as a prosecution witness under Section 311 CrPC. It is therefore, an admitted position that the PW 9 was not examined under Section 161 CrPC, nor under Section 164 CrPC. That being the position, the defence had no opportunity to contradict the testimony of the PW 9 and thereby the defense was not accorded a level playing field. Further, the learned Amicus Curiae has also contended that the testimony of the child witness/PW 9 is not reliable inasmuch as the learned Trial Court has come to a conclusion that the child witness was capable of deposing after asking only three questions. Learned Amicus Curiae submits that after the death of her mother, the PW 9 had been residing with her grandparents, and therefore, there is every likelihood that she had been tutored. Relying on the case of ***Pradeep Vrs State of Haryana, 2023 SCC Online SC 777***, learned Amicus Curiae submits that the trial judge must record his opinion that the child witness understands the duty of speaking the truth and state why he is of the opinion that the child understands the duty of speaking the truth. In the present case however, such an opinion has not been recorded by the learned trial court and therefore the testimony of the PW 9/child witness cannot be relied upon. The trial court did not record any reason as to why he formed an opinion that the child was capable of understanding and deposing the truth. Learned Amicus Curiae further contends that motive has not been established in the present case and even the PW 9 deposed that there was no quarrel between her father and mother prior to the day of the occurrence. Learned Amicus Curiae has thus contended that the conviction of the appellant

is not sustainable on the basis of the testimony of the lone eye witness/ PW 9 when her testimony itself is doubtful and the other witnesses being hearsay witnesses. Learned Amicus Curiae therefore submits that as there are no other corroborative evidences to sustain the conviction, the impugned judgment and order of conviction and sentence is liable to be set aside.

11. Mr. R. R. Kaushik, learned Add. Public Prosecutor appearing for the State respondent has contended that the death of the deceased was a homicidal one as the deceased had sustained a number of grievous injuries as brought out in the post mortem report and corroborated by the PW 9/daughter of appellant. The presence of the PW 9 in the house at the time of the incident has not been disputed and it is natural as she was a child of four years living with her parents at that point of time. Learned Public Prosecutor has relied on the case of **P Ramesh Vrs State** in **Criminal Appeal No. 1013/2019**, SLP (Crl) 4169 of 2018. In the cited judgment, the hon'ble Supreme Court held that in order to determine the competency of a child witness, the judge has to form his or her opinion. The judge is at liberty to test the capacity of the child witness and no precise rule can be laid down regarding the degree of intelligence and knowledge which will render the child a competent witness. A child of tender age can be allowed to testify if she/he has the intellectual capacity to understand questions and give rational answers thereto. If the child understands the question up to her/ him and gives rational answers to those questions it can be taken that he/she is a competent witness to be examined. In the present case, after the preliminary questioning the trial court has recorded the same and satisfaction is reflected in the case records. To support his submissions, learned Addl. Public Prosecutor has relied on the judgment of the Bombay High Court in **Sanjay Vasant Kadam vrs State of Maharashtra** in

Criminal Writ Petition No. 3327 of 2015. In the cited case the Court held that Section 311 of CrPC neither mandates a recording of the statement under Section 161 CrPC nor thus this Section provide any embargo on summoning any person as a witness, whose statement has not been recorded under Section 161 CrPC. The only mandate of Section 311 of CrPC is that the evidence of such person is essential for the just decision of the case. Learned APP submits, that the testimony of PW 9 is valid and admissible. The learned Addl. Public Prosecutor contends that the testimony of PW-9 is corroborated by the medical evidence and other attending circumstances and no interference is called for in the present case as the learned trial court had appreciated and evaluated the evidence in the right perspective to return a correct finding.

12. We have duly considered the submissions of the opposing parties and have also gone through the materials/evidence available in the case records of Sessions Case No. 257/2014 in original, including the testimony of the prosecution witnesses and the documentary evidence.

13. From the arguments advanced by the learned amicus curiae, it is seen that the question of admissibility of the evidence of the child witness has been raised as the testimony of the child witness/PW 9 is one of the basis on which the learned Trial Court has reached the finding of guilt. It is, therefore, appropriate to refer to the evidence/materials on record.

14. PW1/informant had deposed that the incident took place less than a year ago at around 5:30 pm and the accused/appellant is his son-in-law. He stated that one day his granddaughter/ PW9 came to his house weeping and she told him that her mother i.e. his daughter was beaten by her husband, i.e. the

appellant. After getting the information he and his family members went to the place of occurrence which is situated at a little distance from their house. On reaching there he found his daughter lying inside the house with cut injuries over the left ear, cheek and neck on the left side, blood was coming out from the injuries. A dao was lying near the dead body of his daughter with blood stains. The appellant/his son-in-law was not found there. He had absconded. Thereafter, on the following day he filed the FIR at the police station as it was already dark on the day of the incident. During cross examination the PW1 deposed that the distance of his son-in-law's/appellant's house from his house would be about 100 meters. He also stated that the appellant used to beat his daughter quite often. From the above testimony of PW1 it has emerged that he was the first person before whom the PW9 gave the information about the assault on the deceased by the appellant. It has also emerged that the PW9 went to the house of PW1 immediately after the incident happened.

15. The PW2 is a fellow villager who deposed that on 09.11.2013 at around 5:30 in the evening, he came to know from one Manuranjan that the appellant had hacked his wife to dead. He went to the house of the appellant and saw the dead body lying inside the house of the accused/appellant. He noticed cut injuries on the neck, cheek and other parts of the body with bleeding. He also noticed a dao lying near the dead body. The police seized the dao and prepared seizure list and he signed in the seizure list/Ext-3 as a witness. He identified his signature in the seizure list as Ext 3(1). He is also a witness to the inquest report Ext 2 and he exhibited his signature therein as Ext 2(2). He also deposed that the incident was witnessed by the daughter of the accused/appellant and she had also told him that she had witnessed the incident.

16. PW 3 is the Doctor from the Department of Forensic Medicine, Guwahati Medical College. PW3 deposed that on 10.11.2013 he had done the post mortem on the body of the deceased which was escorted by the police in connection with the present case. He deposed as under:

“External appearance-

A female dead body of average built of swarthy completion found, wearing red coloured blouse and yellow sari and white colour woolen clothes. Eyes and mouths closed. Body cold on touch. Rigor mortis fully developed.

Injuries-

- (i) Chop wound of size 12 cm x 3 cm x bone deep present left side of face extending from angle of mouth to tragus of left ear.*
- (ii) Chopped wound of size 6 cm x 3 cm x bone deep present 1 cm below injury no. 1.*
- (iii) Chopped wound of size 16 cm x 3 cm x vertebrae present 2 cm lateral to injury no. 2.*
- (iv) Chopped wound of size 10 cm x 5 cm x vertebrae deep present back of neck.*

All the other organs were pale.

Opinion-

Date was due to haemorrhagic shock as a result of injuries sustained as described. All the injuries were ante-mortem and caused by moderately heavy sharp cutting weapon and homicidal in nature.

Approx time since death 12 to 24 hrs.

Ext. 4 is the PM report and Ext. 4(1) is my signature and Ext. 4(2) is the signature of Dr. Nayan Kumar Das, Demonstrator Dept. of FM, GMCH which I know and Ext. 4(3) is the signature of Dr. A.J. Patowary, Associate Prof Dept of FM, GMCH. Ext. 2 is the inquest report and Ext.

2(3) is my signature and Ext. 2(4) is the signature of Dr. Nayan Kumar Das, Demonstrator Forensic Medicine, GMCH. Ext. 5 is the command certificate and Ext. 5(1) is my signature and Ext. 5(2) is the signature of Dr. Nayan Das, Demonstrator FM, GMCH, which I know. Ext. 6 is the forwarding letter and Ext. 6(1) is my signature and Ext. 6(2) is the signature of Dr. Nayan Kr. Das, Demonstrator, FM, GMCH. Ext. 7 is the dead body challan, Ext. 7(1) is my signature and Ext. 7(2) is the signature of Dr. Nayan Kumar Das, Demonstrator, FM, GMCH”

In his cross-examination PW 3 deposed that the injuries found cannot be caused by any other reasons than that described.

17. PW 4 is the I.O. of the case. He deposed that on 10.11.2013 he was working as S.I of Police. After registration of the case, he was endorsed the present case for investigation. On 09.11.2013 one Debojit Rabha who was ARSU President had informed that police station about the incident over the phone, on the basis of which the GD entry No. 285 dated 09.11.2013 was made. The FIR was lodged by Bikram Kachari. He visited the place of occurrence and examined the witnesses. The dead body was brought to the police station and inquest was done over the dead body. On the same day the dead body was sent for post mortem examination. Later on, he collected the post mortem report, being Ext 4. On 09.11.2013, the offending weapon was found at the place of occurrence and it was seized before three witnesses vide Ext 3. He exhibited his signature therein as Ext 3(2). He also recorded the statement of the seizure witnesses under Section 161 CrPC on 10.11.2013. On 10.11.2013 after lodging of the formal FIR by the informant, the informant and other witnesses were also examined in the police station itself. After completion of investigation and upon finding sufficient incriminating materials against the accused, he submitted the chargesheet against him under Section 302 IPC. He exhibited the chargesheet as Ext 11 and his signature there on as Ext 11(1). In his cross-examination PW

4 deposed that he recorded the statements of the witnesses at the police station itself. None of the witnesses stated that they had seen the incident with their own eyes.

18. PW5 is a neighbour of the informant and the appellant. He deposed that on 09.11.2013, the appellant assaulted his wife with a dao and absconded. Upon hearing the hue and cry in the house of the appellant, his wife told him to find out and accordingly he went to the house of the appellant immediately and there he saw the dead body of the deceased lying in the house. At the place of occurrence he also saw the informant and his wife and the PW9/daughter of the appellant aged 4 years at that time. PW9 was crying and he came to know that she had gone crying to the house of the informant and informed him that the appellant had assaulted her mother with a dao and killed her. Thereafter, the police came to the place of occurrence and started the investigation. He signed in the inquest report and identified his signature therein as Ext 2(5). He deposed that he had seen the dead body and saw the injuries on the neck, left side of the cheek, left side of the ear and he saw bleeding from the injuries. He did not see the appellant at the place of occurrence even after the police had reached there. The police had seized one dao from the place of occurrence and there were some blood stains on that dao. He stated that he would recognise the dao if he saw it. He exhibited his signature in the seizure list of dao as Ext 3(4).

During cross-examination PW5 stated that the distance between his house and the house of the appellant would be about 200-300 meters. He stated that he had not seen himself the actual incident of assault. He had also not seen the daughter/PW9 of the appellant giving the information about the incident to the

informant. He also did not ask anything to the girl/PW9. He stated that he had heard about some quarrel between the appellant and the deceased, but he had personally not seen any such quarrel.

19. PW6 is another fellow villager of the appellant and the informant. He deposed that the incident took place on 09.11.2013 in the house of the appellant. In the incident the appellant/accused had cut his wife with a dao and absconded. On the day of the incident, he saw the minor daughter of the accused/appellant i.e. PW 9 in front of the house of the appellant crying and telling the informant that her father had cut her mother. He also heard the crying of the wife of the informant and therefore he went to the house of the appellant and there he saw the dead body of the deceased with the cut injuries on neck, ear and cheek. There was bleeding from the injuries and at that time he did not see the appellant there as he had ran away. Later the appellant surrendered before the police.

In his cross-examination, he stated that the distance between his house and the place of occurrence is around 200 meters. He stated that he did not see the incident of assault himself. He also did not ask anything to the minor daughter of the appellant. He denied the suggestion that the appellant did not commit the incident.

20. PW 7 is the brother of the deceased and son of the informant. He deposed that the incident took place on 09.11.2013 at about 5:30pm in the house of the appellant. On the day of the incident, Purnima/PW 9, the daughter of the appellant came crying to their house and said that her mother had been cut by the accused/appellant. Thereafter, he along with his father and other co-

villagers went to the place of occurrence immediately. At the place of occurrence they found his sister lying dead. On the dead body of the deceased he saw cut injuries on the neck, left side of the ear and left side of the cheek. At the place of occurrence, one blood stained dao was lying on the ground. The police reached the place of occurrence at about 7:00 to 7:30 pm. The police seized the dao from the place of occurrence in their presence and made the seizure list which is Ext 3 and he identified his signature in the seizure list as Ext 3(5). During his cross-examination PW 7 stated that between the house of the appellant and their house there is only one house. He had not seen the actual incident of assault by the appellant. He reached the place of occurrence after about 15 minutes after the incident. He denied the suggestion that his sister was killed by some other person. He also denied the suggestion that he has given evidence against the accused because the deceased is his sister.

21. PW 8 is also a co-villager who knows both the informant as well as the appellant. He deposed that the incident took place on 09.11.2013 at about 5:30 pm in the house of the appellant. At that time he was coming from the market and upon hearing hue and cry in the house of the appellant he went there. At the place of occurrence he saw the deceased lying dead, with cut injuries of her neck left side of the cheek and left ear. There was blood from the injuries. He did not see the appellant at the place of occurrence as he had absconded after cutting his wife. At the place of occurrence he met the informant and his family, PW 7, PW 5 and some other persons. The police examined him and recorded his statement. He came to know from the informant that he was informed by the 4 year old daughter of the appellant that the appellant had cut his wife. During the cross-examination PW 8 stated that he had not seen the actual incident himself. And he had not asked anything to Purnima the daughter of the

appellant. Purnima/PW9 also did not tell him anything regarding the incident. He denied the suggestion that the deceased was not cut by the accused or that the deceased was cut by some other person.

22. PW 9 is the daughter of the appellant and the deceased. She was 7 years old at the time of giving the testimony. In order to ascertain as to whether she was capable to testify the learned trial Court asked a number of questions to her and on the basis of the answers given by PW 9 the Court found that PW 9 was capable to depose as she had given rational answers to the questions put to her.

In her testimony, the PW 9 stated that the incident took place in their house. At the time of the incident she was in the house along with her father and mother. On the day of the incident, in the evening her father cut her mother on her neck with a dao and thereafter, threw away the dao and ran away. Her mother fell down and she died. She got very scared and started to cry. Thereafter, she went crying to the house of her grandfather and told her grandfather about the incident that she had seen her father cutting her mother. Her grandparents, her uncle (mama) and others came to the place of occurrence and saw her mother lying dead. The dao was lying at the place of occurrence. After the incident on the same day, the police came to the place of occurrence. The police took away the dao and also the dead body of her mother. The police did not ask her anything and she was crying. From then onwards she has been staying in the house of her grandfather.

In cross-examination, PW 9 reiterated that the incident had taken place in her house. At the time of the incident she was inside the house, near her parents. Prior to the incident there was no quarrel between her father and mother. On the day of the occurrence, prior to the incident no other persons had come to

their house. PW 9 denied the suggestion that she was deposing on the basis of tutoring, she also denied the suggestion that at the time of the incident she was not present inside their house.

23. PW 10 is the President of ARSU. He is the person who had called the police station on 09.11.2013, on the basis of which the GD entry was made. PW 10 deposed that he knows the informant and the appellant. On 09.11.2013, when the incident took place he was informed about the incident by two members of his organisation from the village of the informant and appellant. Upon getting the information he along with his colleagues went to the place of occurrence and reached there at about 6:45 pm on the same day. At that time he informed the O.C. of the Palashbari police station about the incident. Upon going to the place of occurrence he saw the dead body of the deceased inside the house of the appellant. On seeing the dead body he noticed injuries on the left side of the ear, cheek and neck. He noticed serious injuries on the neck and also saw one dao lying near the dead body of the deceased.

24. PW 11 deposed that on 09.11.2013 he was the O.C of Palashbari police station. On that day he received information over the phone about the incident from one Debojit Rabha (PW10). He recorded the information as GD entry and exhibited the same as Ext 9 and his signature thereon as Ext 9(1). He entrusted PW 4 to investigate the case. On the next day the formal FIR was received and a case registered. He exhibited the FIR as Ext 1 and Ext 1(2) as his signature there on.

25. The learned Trial Court had examined the PW 9 invoking the provision of Section 311 CrPC, upon an application filed by the Public Prosecutor and without

any objection from the defence. The hon'ble Supreme Court in the Case of ***K. P. Tamilmaran vrs The State by Deputy Superintendent of Police, 2025 INSC 576***, has clearly expounded on the law relating to Section 311 CrPC. There is a wide discretion with the courts under Section 311 CrPC and this power can be exercised suo moto. If the court finds that a person who should have been examined as a prosecution witness is omitted from the list of witnesses due to some oversight, mistake or for any other reason the court may allow the application and such a person can be examined as a prosecution witness. In this case it is also an admitted position that when the application under Section 311 CrPC was moved by the Public Prosecutor, the defence did not raise any objection.

26. It is settled law that a child witness if found competent on the facts and to be a reliable witness, his/her witness could be the basis of conviction. Even in the absence of oath, the evidence of a child witness can be considered under Section 118 of the Evidence Act, subject to the rider that such child witness is able to understand the questions and able to give rational answers. The evidence of a child witness and the credibility depends upon the facts and circumstances of each case. In the case of ***State of Madhya Pradesh Vrs Ramesh And Another*** reported in ***2011 4 SCC 786***, the Hon'ble Supreme Court observed that;

“11. The evidence of a child must reveal that he was able to discern between right and wrong and the court may find out from the cross-examination whether the defence lawyer could bring anything to indicate that the child could not differentiate between right and wrong. The court may ascertain his suitability as a witness by putting questions to him and even if no such questions had been put, it may be gathered from his evidence as to whether he fully understood the implications of what he was saying and whether he stood discredited in facing a stiff cross-

examination. A child witness must be able to understand the sanctity of giving evidence on oath and the import of the questions that were being put to him.

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14. In view of the above, the law on the issue can be summarised to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition."

27. In ***State of Uttar Pradesh Vrs Krishna Master and Others***, reported in ***2010 12SCC 324***, the Hon'ble Supreme Court held that there is no principle of law that it is inconceivable that a child of tender age would not be able to recapitulate the facts in his memory witnessed by him long ago. It would be doing injustice to a child witness possessing a sharp memory to say that it is inconceivable for him to remember facts in his memory when asked about the same at any point of time, notwithstanding a long gap. A child is always receptive to abnormal events which take place in his life and would never forget those events for the rest of his life. The child would be able to recapitulate correctly and exactly when asked about the same in the future. In case the child explains the relevant events of the crime without improvements or embellishments, and the same inspires the confidence of the court, his depositions do not require any corroboration whatsoever. The child at a tender age is incapable of having any malice or ill will against any person.

28. In the case of the ***State of Madhya Pradesh Vrs Balveer Singh, 2025***

INSC 561, the Hon'ble Supreme Court held that the Evidence Act does not prescribe any minimum age for a witness. The correctness of the opinion formed by the Trial Court as to why it is satisfied that the child witness was capable of giving evidence may be gone into by the appellate Court by either, scrutinising the preliminary examination conducted by the Trial Court, OR from the testimony of the child witness OR the demeanour of the child during the deposition and cross-examination as recorded by the Trial Court.

29. In view of the above, the law on the issue is now clear that the deposition of a child witness may require corroboration but in case his deposition inspires the confidence of the Court and there are no embellishments or improvements, the court may rely on his evidence. Only in case there is evidence on record to show that the child has been tutored, the court can reject his statement partly or fully. However, an inference as to whether the child has been tutored or not can draw from the contents of his depositions.

30. In the backdrop of the above principles, we find that it was only after PW 9 was found to be able to understand the questions put to her and after PW 9 had provided rational answers to them, the learned Trial Court had reached the satisfaction as regards her suitability and competency to depose about the events. When the PW 9 was examined by the prosecution and cross-examined by the defence, PW 9 who was aged about 7 years at the time of her testimony, deposed in a manner wherefrom it does not emerge that she was tutored. The testimony of PW9 is found to be very clear, specific, cogent and reliable. Even in the cross examination her testimony remains steadfast and the defence could not demolish her testimony and her testimony has inspired the confidence of the court. PW-9 is a natural eye witness as it is completely normal for a 4 year

old child to be with her parents in their house in the evening.

31. The injuries on the dead body clearly indicate that it is a case of homicide which has resulted in the death of the deceased. What has emerged from the evidence is that the dao was recovered at the P.O and seizure was proved in accordance with law and corresponds with the P.M Report which states that the injuries were caused by a heavy sharp cutting weapon. The PW 1, 2, 5, 6, 7, 8, 9, and 10 had all testified about the cut injuries on the deceased. The incident took place inside the house of the appellant and there was no one else there at the time of the incident except the appellant, the deceased and the PW-9. When the ocular evidence, the medical evidence, and other corroborating evidence as mentioned above, are considered in its entirety we find that the testimony of PW 9 is trustworthy, reliable and natural and it has received corroboration on all the material points from the other evidence and the documentary evidence. The testimony of PW 9 is found to be credible and trustworthy inspiring the confidence of the court. Having appreciated the evidence on record, we do not find any infirmity in the finding reached by the Trial Court and the prosecution has been able to prove the case beyond all reasonable doubt that it was the appellant alone who was the perpetrator of the crime. Therefore, we are of the view that the instant criminal appeal is devoid of merit and the same deserves to be dismissed.

32. We wish to place our appreciation on record for the services rendered by Mr. A. Kalita, learned Amicus Curiae and he is entitled to the fees as notified for the same.

33. Having regard to the fact that the deceased had left behind a minor child at

the time of her death, the concerned District Legal Service Authority is directed to make the compensation under Section 357 A CrPC expeditiously, if not already released.

34. The records of the Trial Court be sent back.

JUDGE

JUDGE

Comparing Assistant