SUPREME COURT OF INDIA

Ratansinh Dalsukhbhai Nayak

Vs.

State of Gujarat

Crl.A.No.631 of 2003

(Doraiswamy Raju and A. Pasayat JJ.)

29.10.2003

JUDGEMENT

Arijit Pasayat, J.

1. A child of tender age was stated to have witnessed a ghastly occurrence where two elderly persons lost their lives because of murderous assaults by the appellant. On 28-8-2000 Zaveriben (P.W. 11) informed her father that the two deceased persons were being assaulted by a wooden stick by the appellant. Next day in the morning her father found one of them dead and the other about to breath his last. Information was lodged at the police station and investigation was undertaken; charge-sheet was placed on completion thereof. Accused-appellant was charged for allegedly having committed offence punishable under S. 302 of the *Indian Penal Code, 1860* (for short 'the IPC'). He pleaded innocence. The child witness told another child witness (Karansinh, P.W. 22) her brother about what she had seen. Accused-appellant pleaded innocence and false implication.

2. Placing reliance on the evidence of the child witness whom the trial Court found to be truthful the accused was convicted for offence punishable under S. 302, I.P.C. and sentenced to undergo imprisonment for life.

3. An appeal was carried before the Gujarat High Court which by the impugned judgment confirmed the conviction and sentence imposed by the trial Court.

4. In support of the appeal, learned counsel for the appellant submitted that the fate of the case depends upon the acceptability of child witnesses' evidence. In such a case unless evidence is totally unblemished, corroboration is necessary. This is because there is scope for tutoring. Strong reliance was placed on *Arbind Singh v. State of Bihar*[1] to contend that where the Court finds traces of tutoring, corroboration is a must before the evidence of the child witness can be acted upon. It is submitted that informant was a close relative and his conduct in not immediately reacting to what her daughter said shows that the prosecution has not come with clean hands. The child witnesses' evidence clearly shows she was tutored and she has admitted it.

5. In response, learned counsel for the respondent submitted that there was no close relationship between the deceased and the informant and the child witness and the reference to the deceased as grandfather, grandmother or the accused as Kakka was not because of any relationship but more by way of respectful reference or addressing them. At the earliest available opportunity, the child witness had told her father. A stray sentence in her evidence has been magnified out of context to contend that it establishes tutoring. Her evidence when considered in the background of the recoveries made and the Forensic Science Laboratory report which shows of the bloodstains found on the assault weapon used were of the same blood group as that of deceased. There is no infirmity in the conclusions of the trial Court and the High Court to warrant any interference.

6. Pivotal submission of the appellant is regarding acceptability of P.W. 11's evidence. Age of the witness during examination was taken to be about 10 years. Indian Evidence Act, 1872 (in short the 'Evidence Act') does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, S.118 of the Evidence Act envisages that all persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease - whether of mind, or any other cause of the same kind. A child of tender age can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto. This position was concisely stated by Brewer, J. in *Wheeler v. United States*[2]. The evidence of a child witness is not required to be rejected per se; but the Court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon. (See Surya Narayana v. State of Karnataka (2001 (1) Supreme 1).

7. In *Dattu Ramrao Sakhare v. State of Maharashtra*[3] it was held as follows:

> "A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under S. 118 of the Evidence Act provided that such witness is able to understand the answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the Court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored."
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> The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence and said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial Court may, however, be disturbed by the higher Court if from what is preserved in the records, it is clear his conclusion was

erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make beliefs. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaked and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the Court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness.

8. The learned trial Judge has elaborately analysed the evidence of eye-witness. There is no reason as to why she would falsely implicate the accused. Nothing has been brought on record to show that she or her father had any animosity so far as the accused is concerned. The prosecution has been able to bring home its accusations beyond shadow of doubt. Further, the trial Court on careful examination was satisfied about child's capacity to understand and to give rational answers. That being the position, it cannot be said that the witness (PW-11) had no maturity to understand the import of the questions put or to give rational answers. This witness was cross-examined at length and in spite thereof she had described in detail the scenario implicating the accused to be author of the crime. The answers given by the child witness would go to show that it was only repeating what somebody else asked her to say. The mere fact that the child was asked to say about the occurrence and as to what she saw, is no reason to jump to a conclusion that it amounted to tutoring and that she was deposing only as per tutoring what was not otherwise what she actually saw. The learned Counsel for the accused-appellant has taken pains to point out certain discrepancies which are of very minor and trifle nature and in no way affect the credibility of the prosecution version.

9. Evidence of PW-11, the child witness has credibility which reveals a truthful approach and her evidence to put it milady has ring of truthing. There are no exaggerations and she has stuck to her statement made during investigation in all material particulars. That being so, the trial Court and the High Court were justified in placing implicit reliance on her testimony. In addition, the evidence to recovery and the report of the Forensic Science Laboratory provide additional support to the prosecution version.

10. We find no merit in this appeal which is accordingly dismissed.

Appeal dismissed.

[1]*(1995 Supp 4 SCC 416)*
[2]*(159 US 523)*
[3]*(1997 (5) SCC 341)*