HAMZA

v.

MUHAMMADKUTTY @ MANI & ORS.

(Criminal Appeal No. 268 of 2007 etc.)

JUNE 20, 2013

[A.K. PATNAIK AND GYAN SUDHA MISRA, JJ.]

Penal Code, 1860 - s.302/34 - Death of woman in her matrimonial house by stab injury on neck - Initial prosecution of the family members of the in-laws of the deceased u/ss. 498A and 306 IPC - Acquittal in the case - Not challenged further - Complaint by brother of the deceased alleging murder of the deceased by 6 family members of her in-laws - Prosecution u/s. 302 and 201 r/w. s.34 IPC - Son of the deceased, who was 7 years of age at the time of incident, deposed as eye-witness - Trial court relying on the testimony of child witness, convicted 2 of the accused u/s.302/34 while acquitted other 4 accused - High Court reversed the order of conviction - On appeal, held: Order of High Court is not perverse or unreasonable so as to call for interference - Prosecution failed to prove its case beyond reasonable doubt - The child witness was tutored and his evidence was without adequate corroboration and hence did not inspire confidence - Order of acquittal upheld.

Witness - Child witness - Testimony - Corroboration of - Held: In absence of corroboration of oral testimony of child witness, his evidence cannot be relied on.

Medical Evidence - Appreciation of - Held: Medical evidence cannot be considered in isolation and must be taken in conjunction with all the circumstantial evidence on record - When the doctor expresses two views, the view favourable to the accused should be taken into account.

A *Constitution of India, 1950 - Art. 136 - Appeal under - Against order of acquittal - Scope of - Held: If the view taken by High Court is reasonable or plausible one on the evidence on record, Supreme Court should not reverse the order of acquittal passed by High Court, on the ground that it had* B *different view.*

The deceased in the present case, succumbed to the stab injuries on her neck. Initially four members of the family of her in-laws were prosecuted u/ss. 498A and 306 C **IPC.. They were acquitted of the charges and no appeal was preferred against the acquittal order.**

After 2 years of the incident, PW-2 (brother of the deceased) lodged a complaint against A-1 to A-6 alleging that A-1 and A-2 killed the deceased by stabbing her and D **accused Nos. 3 to 6 caused disappearance of the evidence of murder. The accused persons were prosecuted u/ss.302 and 201 r/w. s.34 IPC. Trial court relying on the oral testimony of the child eye-witness (son of the deceased who was 7 years old at the time of** E **the incident) convicted A-1 and A-2 for the offences u/s. 302/34 IPC. However, acquitted A-3 to A-6 of the offences u/ss.302 and 201 r/w. s.34 IPC. High Court acquitted A-1 and A-2 (respondents) disbelieving the evidence of the child witness. Hence the present appeal by the** F **complainant.**

Dismissing the appeal, the Court

HELD: 1.1. The view taken by the High Court that A-1 and A-2 were entitled to acquittal is not perverse or G **unreasonable on the evidence on record so as to call for interference under Article 136 of the Constitution. [Para 21] [888-E]**

1.2. If the view taken by the High Court is reasonable H **or a possible one on the evidence on record, this Court**

will not reverse the judgment of acquittal of the High Court only on the ground that it had a different view of the evidence on record. Hence, the scope of the present appeal under Article 136 of the Constitution is limited to finding out whether the view taken by the High Court that on the evidence on record, the conviction of A-1 and A-2 for the offence under Section 302 read with Section 34 of the IPC was not sustainable was a perverse or unreasonable view so as to call for interference by this Court under Article 136 of the Constitution. [Para 14] [882-A-C]

State of Karnataka vs. Amajappa and Ors. **(2003) 9 SCC 468;** *State of Uttar Pradesh vs. Banne alias Baijnath and Others* **(2009) 4 SCC 271;** *State of Haryana vs. Shakuntla and Others* **(2012) 5 SCC 171: 2012 (5) SCR 276 - relied on.**

2.1. It appears from the evidence of PW-1 that he was not revealing the whole truth and avoided to answer uncomfortable questions which would have prejudiced the prosecution case. Thus, PW-1 was tutored and hence his evidence could not be relied on without adequate corroboration. [Para 16] [884-B-C]

Suresh vs. State of U.P. **(1981) 2 SCC 569: 1981 (3) SCR 259;** *State of Madhya Pradesh vs. Ramesh and Anr.* **(2011) 4 SCC 786: 2011 (5) SCR 1 - relied on.**

Promode Dey vs. State of West Bengal **(2012) 4 SCC 559: 2012 (3) SCR 887 - distinguished.**

The Proof of Guilt Glanville Williams, Third Edition, published by Stevens and Sons - referred to.

2.2. Under Section 157 of the Evidence Act, the testimony of PW-1 could be corroborated by his statements about the time of the incident. From the

A evidence of PW-1 it appears that PW-1 did not tell anything about the incident to the police on the date of the incident, though the police had come to the house where the incident had taken place. Next day evening after her mother's body was buried, he went to the B mother's house and told the whole incident he witnessed to his aunt 'S' and grandmother 'N' and the complainant. 'S' has not been examined as a witness to corroborate the testimony of PW-1. Maternal grandmother of PW-1, 'N' has also not been examined to corroborate the testimony C of PW-1. [Para 17] [884-D, G-H; 885-A]

2.3. Even though the evidence of PW-2-complainant corroborates the testimony of PW-1, his evidence cannot be relied on to lend assurance that PW-1 was giving a true version of the incident. [Para 17] [885-E]

D

2.4. In the absence of any corroboration of the oral testimony of PW-1, the High Court was right in taking the view that it is unsafe to convict A-1 and A-2 only on the evidence of PW-1, who was a child witness and whose E evidence did not inspire any confidence. [Para 17] [885-G-H]

2.5. The evidence of the medical experts cast a serious doubt on the reliability of the evidence of PW-1. PW-4, who conducted the postmortem examination of the F body of the deceased and issued the postmortem certificate (Ex.P-12) has said "I cannot definitely say whether it is a case of suicide or homicide." DW-1, Professor and Head of the Department of Forensic Medicine and Police Surgeon, Medical College, has also G opined in his medico-legal opinion Ex. D-1 "Under the circumstances, as per the medical evidence, the most likely manner of causation of injuries in this case is self infliction except for the fact that there is always a chance of any mechanical injury to be sustainable by homicidal H manner." Thus, the aforesaid opinions of the two medical

experts also do not lend assurance to the prosecution story that the death of the deceased was only homicidal. On the evidence of PW-1 read with the opinions of PW-4 and DW-1, the High Court could not have held that the prosecution has been able to prove beyond reasonable doubt that A-1 killed the deceased by stabbing her on the neck with the help of A-2. [Para 20] [887-C-G]

State of Tamil Nadu vs. P. Muniappan **(1998) 1 SCC 515: 1997 (6) Suppl. SCR 124 - distinguished.**

Modi's Medical Jurisprudence & Toxicology, 22nd Edition at page 387; 'The Proof of Guilt' by Glanville Williams, **Third Edition - referred to.**

2.6. When a doctor expresses two views, the one that is favourable to the accused might be taken into account, as a general proposition it may be true, but medical evidence could not be considered in isolation and must be taken into conjunction with all the circumstantial evidence on record. The present case is not a case where the only conclusion that could be drawn considering the entire evidence is that the death was homicidal and not suicidal. [Para 20] [887-H; 888-A, D]

Rameshwar vs. The State of Rajasthan **1952 SCR 377;** *Mohamed Sugal Esa Mamasan Rer Alalah vs. The King* **AIR (33) 1946 PC 3;** *State of U.P. vs. Ashok Dixit and Anr.* **(2000) 3 SCC 70: 2000 (1) SCR 855 - referred to.**

Case Law Reference:

1952 SCR 377	**referred to**	**Para 5**
AIR (33) 1946 PC 3	**referred to**	**Para 12**
2000 (1) SCR 855	**referred to**	**Para 12**
(2003) 9 SCC 468	**relied on**	**Para 14**
(2009) 4 SCC 271	**relied on**	**Para 14**

2012 (5) SCR 276	**relied on**	**Para 14**
2011 (5) SCR 1	**relied on**	**Para 16**
1998 (1) Suppl. SCR 40	**relied on**	**Para 18**
1981 (3) SCR 259	**distinguished**	**Para 19**
2012 (3) SCR 887	**distinguished**	**Para 19**
1997 (6) Suppl. SCR 124	**distinguished**	**Para 20**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 268 of 2007.

From the Judgment & Order dated 23.09.2005 of the High Court of Kerala at Ernakulam in Crl. A.No. 1187 of 2005(B).

WITH

Crl. Appeal No. 1378 of 2007.

Basant, B.V. Deepak, Usha Nandini V., Biju P, Raman, Nishe Rajan Shonker (for T.T.K. Deepak & Co.) Jogy Scaria, K.K. Sudheesh, Romy Chacko, Varun Mudgal, R. Sathish, M.T. George for the appearing parties.

The Judgment of the Court was delivered by

A.K. PATNAIK, J. 1. These are appeals by way of special leave under Article 136 of the Constitution against the judgment dated 23.09.2005 of the Division Bench of the Kerala High Court in Criminal Appeal No. 1187 of 2005 (B).

Facts of the Case:

2. The facts very briefly are that on 26.02.1998 between 7.00 p.m. to 7.30 p.m. Suhara sustained stab injuries on her neck while she was in the house of her in-laws. She was initially taken to the Government hospital, Pattambi and was thereafter taken to Moulana Hospital, Perinthalmanna, where she succumbed to the injuries and died. On 27.02.1998, the Pattambi Police registered the First Information Report (FIR) on the statement given by one Saidalavi, a relative of Suhara,

that she had suspicion regarding the death of Suhara (hereinafter referred to as 'the deceased'). On 27.02.1998, postmortem was conducted on the body of the deceased by the Lecturer, Forensic Medicine and Assistant Police Surgeon, Medical College, Trichur. The local police then investigated into the case and came to the conclusion that it was a case of harassment and suicide and filed a charge-sheet against four members of the family of the in-laws of the deceased for offences under Sections 498-A and 306 of the Indian Penal Code (for short 'the IPC') but the accused persons were subsequently acquitted of the offences under Sections 498-A and 306 of the IPC and no appeal was filed by the State against the judgment of acquittal passed by the trial court. After two years of the incident, Hamza, the brother of the deceased, lodged a complaint before the Magistrate on 26.02.2000. In the complaint, Hamza stated that the deceased was married to Ishaq, who was employed abroad and the couple had two children, a boy Mohd. Faizal and a girl Fasila. Hamza alleged that in the beginning Ishaq was sending cash from abroad to his brother Muhammadkutty, but later on stopped sending cash to him and instead sent the cash to the deceased and as a result a quarrel started between the brothers of Ishaq and the deceased and on 26.02.1998 at 6.30 p.m. Hamsappa (Accused No.2 for short 'A-2'), brother of Ishaq, caught hold of the hands and legs of the deceased and Muhammadkutty (Accused No.1 for short 'A-1') killed her by stabbing her neck with a knife and stuffing clothes into her mouth. Ayisha (mother-in-law of the deceased), Asia (wife of Hamsappa), Pathummakutty (wife of Muhammadkutty) and Saju @ Sajitha (daughter of Muhammadkutty) (Accused No. 3 to Accused No.6 for short 'A-3 to A-6') changed the dress of the deceased and washed all the blood from the scene of occurrence and caused disappearance of the evidence of the murder. Accordingly, the aforesaid six accused persons committed offences punishable under Sections 302 and 201 read with Section 34 of the IPC. The complainant and his witnesses were examined by the Magistrate under Section 202 of the Code of Criminal

A Procedure, 1973 (for short 'the Cr.P.C.'). The Magistrate took cognizance of the case and issued processes against all the six accused persons. After the accused persons entered appearance and were served with the copies of all the relevant documents, the Magistrate committed the case to the Sessions B Court, Palakkad on 03.04.2001. The Sessions Court thereafter framed charges against the six accused persons under Sections 302 and 201 read with Section 34 of the IPC and conducted trial in Sessions Case No.447 of 2001.

C 3. At the trial, altogether six witnesses were examined and 17 documents were marked as exhibits on behalf of the prosecution. Mohd. Faizal, the son of the deceased, was examined as PW-1. He was about 7 years old on 26.02.1998 and he claimed to be a witness to the murder of the deceased. He deposed before the Court that on 26.02.1998 at 7.00 p.m D when he, his mother and younger sister were lying in the bedroom for the purpose of sleeping, A-1 and A-2 came to the bedroom and A-1 took him to the sofa placed in the portico and when A-1 took his sister, the deceased cried and on hearing this, he looked into the room through a window and he E saw A-2 catching hold of the hands of the deceased and A-1 pushing cloth into her mouth and stabbing on her neck with a knife. PW-1 further deposed that on seeing this he cried aloud and A-1 came out of the room, took him to the kitchen side and told him that he will also do the same thing to him if he divulged F the incident to anybody. PW-1 further stated before the Court that there was light in the room at the time of the occurrence and he saw A-3 cleaning the bedroom and A-4 and A-6 changing the dress of his mother and his mother was thereafter taken to the hospital by family members and neighbours and G later somebody telephoned to the house and intimated that his mother has expired. PW-1 also deposed that on the next day he slept in his maternal aunt's house and in the night he narrated the incident to his aunt and uncle (the complainant). He also stated that on the day of the burial of the deceased H the police questioned him and he stated to the police that his

mother was murdered and he also met the doctors of Trichur and told them that his mother was murdered. The complainant was also examined as PW-2, who inter alia stated before the Court that on the day next to the date of incident, PW-1 slept in his house with his aunt and told him and his other family members that the deceased was stabbed to death by A-1 with the help of A-2. The Lecturer in Forensic Medicine and Assistant Police Surgeon, Medical College Trichur, who conducted the autopsy on the dead body of the deceased on 27.02.1998 and issued a postmortem certificate Ex. P-12 was examined as PW-4 and he stated that the deceased died due to cut injuries on the neck and the injuries were more likely self inflicted, but the possibility of homicide could not be ruled out. In defence, the accused persons examined the Professor and Head of the Department of Forensic Medicine and Police Surgeon, Medical College, Trichur as DW-1, who had given a medico-legal opinion, which was marked as Ex. D-1. DW-1 has concluded in his opinion that the injuries on the neck of the deceased are consistent with the case of a suicide.

4. The trial court relied on the sole oral testimony of PW-1 and convicted A-1 and A-2 for the offence under Section 302 read with Section 34 of the IPC. The trial court, however, held that there was nothing to suggest that A-3 to A-6 shared the common intention of A-1 and A-2 to murder the deceased. The trial court further held that there was nothing also to show that A-3 to A-6 were aware that A-1 and A-2 had committed the murder and that they cleaned the room and changed the dress of the deceased with a view to cause disappearance of evidence to screen the offenders. The trial court accordingly acquitted A-3 to A-6 of the offences under Sections 302 and 201 read with Section 34 of the IPC. Aggrieved, A-1 and A-2 filed a Criminal Appeal No. 1187 of 2005 (B) before the High Court. The High Court held in the impugned judgment that the oral evidence of PW-1 did not inspire confidence and it was not safe to convict the accused persons on the sole testimony of the child witness. The High Court also held that the possibility

A of suicide by the deceased could not be ruled out, rather the suicide by the deceased was more probable. The High Court held that in any event it is a case in which two views are possible, one in favour of the accused and the other against the accused and in such cases the view in favour of the accused B must be preferred and therefore the accused persons were entitled to be acquitted. Accordingly, the High Court set aside the conviction and sentence under Section 302 read with Section 34 of the IPC imposed on A-1 and A-2 by the trial court and allowed the Criminal Appeal.

C

Contentions on behalf of the Appellants:

5. Mr. B.V. Deepak, learned counsel appearing for the appellant, Hamza, submitted that the High Court should not have disbelieved PW-1 merely because he was a child witness. D He submitted that the Magistrate before committing the case for trial to the Sessions court had recorded the statement of PW-1 on 26.02.2000 only after being satisfied about his competency to testify. He cited the judgment of this Court in *Rameshwar* vs. *The State of Rajasthan* (1952 SCR 377) in E which Vivian Bose, J. speaking for the Court has held that the rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to F dispense with it, must be present to the mind of the judge. He submitted that this Court has further held in the aforesaid case the tender years of the child, coupled with other circumstances appearing in the case, may render corroboration unnecessary but that is a question of fact in every case. He also cited *Suresh* G *vs. State of U.P.* [(1981) 2 SCC 569] in which this Court relied on the evidence of a child witness to maintain the conviction of the accused servant for the murder of the mistress of the house and her son. He also relied on the recent decision in *Promode Dey* vs. *State of West Bengal* [(2012) 4 SCC 559] in which the testimony of a girl child was relied on by this Court to H

maintain the conviction of the accused under Section 302 IPC. A

6. Mr. Deepak submitted that the High Court was not right in coming to the conclusion that it was more probably a case of suicide than a case of homicide. He relied on the *post mortem* certificate Ex.P/12 to argue that the injuries mentioned B therein could not have been self-inflicted. He referred to the findings of the trial court that the possibility of homicide should not be ruled out. He referred to *Modi's Medical Jurisprudence & Toxicology*, 22nd Edition at page 387 which states that homicidal wounds on the throat, when inflicted from the front by a right-handed person, are, as a rule horizontal and directed C from right to left; but the reverse is the case if the assailant happens to be left-handed. He submitted that as the wounds on the throat of the deceased were horizontal, the death of the deceased was homicidal and not suicidal. He referred to the evidence of DW-1 who had admitted that homicide cannot be D ruled out. He submitted that PW-4 has similarly deposed that the possibility of homicide could not have been ruled out. He submitted that thus the medical evidence was not in conflict with the ocular evidence of PW-1 and the ocular evidence of PW-1 can be relied upon to hold A-1 and A-2 guilty for the offence E under Section 302, IPC read with Section 34, IPC.

7. Mr. Deepak submitted that the defence story that the deceased had committed suicide between 6.30 pm to 7.30 pm on 26.02.1998 is not at all credible and at any rate no evidence F has been adduced on behalf of the defence that the deceased had earlier suicidal tendencies. He submitted that a young mother is not likely to commit suicide leaving behind two children to the mercy of her in-laws. He argued that in this case a miscarriage of justice has taken place from the acquittal of the G guilty. He submitted that in view of the direct evidence of PW-1 that A-1 and A-2 had committed the murder of the deceased, the High Court ought to have maintained the conviction of A-1 and A-2 by the trial court.

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A 8. Learned counsel appearing for the appellant-State in Criminal Appeal No.1378 of 2007, submitted that the consistent version of PW-1 that A-1 and A-2 had committed the murder of his mother should have been accepted by the High Court even though PW-1 was a child witness. He cited *State of* B *Madhya Pradesh* vs. *Ramesh and Another* [(2011) 4 SCC 786] in which this Court has held that the deposition of a child witness may require corroboration but in case his deposition inspires confidence of the court and there is no embellishment or improvement therein the court may rely upon his evidence. C He submitted that in the aforesaid case this Court has also held that only in case there is no evidence on record to show that the child has been tutored, the court can reject his statement partly or fully. He submitted that the High Court, therefore, should have come to a finding that PW-1 was tutored before it could D reject the evidence of PW-1. He submitted that if the evidence of PW-1 is read, it will be clear that PW-1 has withstood a lengthy cross-examination and is a reliable witness and the High Court was not right in discarding his evidence as not reliable. He relied on the decision in *State of Tamil Nadu* vs. *P. Muniappan* [(1998) 1 SCC 515] in which the doctors took E two views about the cause of death and the Court held that if the entire circumstantial evidence points to homicide only, and the medical evidence is not to the contrary, the death can be homicidal only. He submitted that in this case similarly as the evidence of PW-1 is clear that A-1 and A-2 had caused F homicidal death of the deceased and the medical evidence of PW-4 and PW-1 did not rule out homicide, the High Court should have maintained the conviction of A-1 and A-2 under Section 302, IPC read with Section 34, IPC.

G **Contentions on behalf of the respondent-accused persons**

9. Mr. Basant, senior counsel, appearing for the A-1 and A-2, on the other hand, submitted that the High Court was right in taking the view in the impugned judgment that it was not safe H

to convict A-1 and A-2 on the sole uncorroborated testimony of PW-1, who was only 7 years old at the time of the incident. He submitted that Section 118 of the Indian Evidence Act, 1872 provides 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 those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. He submitted that the requirements of Section 118 have not been satisfied in this case because before PW-1 who was of tender years was examined, the trial court has not put questions to him to find out his competence to testify as a witness. He submitted that the incident took place on 26.02.1998 and from 27.02.1998, PW-1 has remained in the custody of his maternal uncle, PW-2, who had animosity against all the accused persons. The result was that PW-1 implicated not only A-1 and A-2 but also A-3 to A-6 in the offences under Sections 201 and 302 read with Section 34 of the IPC. He submitted that there was no evidence that PW-1 revealed to any one on 26.02.1998 that A-1 and A-2 had committed the murder of the deceased and from the evidence of PW-1 it appears that for the first time PW-1 revealed to his maternal aunt, Sareena, that he saw A-1 and A-2 committing the murder of the deceased. He submitted that aunt Sareena, however, has not been examined by the prosecution before the Court to corroborate the testimony of PW-1 under Section 157 of the Indian Evidence Act, 1872, instead PW-2, who was the complainant and who had animosity against all the accused persons had been examined. He referred to Ex. P.10, a letter of the Superintendent of Police, Crime Branch, CID Palakkad, in which he has stated that during investigation by the Crime Branch, CID, PW-1 has stated that Muhammadkutty pushed cloth in the mouth of his mother and Hamsappa stabbed her with knife, but investigation disclosed that this was a tutored version concocted by his maternal grand parents and investigation revealed that Muhammadkutty and Hamsappa were not at all present in the scene at the time of occurrence.

A 10. Mr. Basant submitted that PW-1 has stated in his examination-in-chief that there is a window from the portico to the room where his mother was lying and through that window he looked inside and saw A-2 was catching hold of his mother's hands and A-1 pushed cloth into the mouth of his mother and B stabbed the front of mother's neck with a knife and he has admitted in his cross-examination that he could not have seen the incident had the window not been opened and that is why he had opened the window, but prior to his evidence before court he has not stated anywhere that he saw the incident after C opening the window. He submitted that he has also stated in his cross-examination that the window was used to be bolted before going to bed in the night. He submitted that on this inconsistent evidence of PW-1, it is extremely unsafe to convict the accused persons for the offence under Section 302 read D with Section 34 of the IPC and for this reason the High Court has set aside the conviction of A-1 and A-2.

11. Mr. Basant submitted that from the evidence of PW-1 itself he can give three illustrations to show that PW-1: (i) He has stated in his evidence that he did not know about the E marriage of Thatha 4 to 5 days prior to the incident, though Thatha was the daughter of his father's sister and the entire family had gone to attend the marriage; (ii) when the question was put to him whether A-2 accompanied when his mother was taken to the hospital, he stated that he does not remember, F though, in fact, A-2 took the deceased to the hospital in his presence; (iii) when the question was put to him that there was a small reaper fixed from inside on account of which the window between the room in which the incident took place and the portico in which he was laid down because of which the G window could not be opened, he stated that he does not remember.

12. Mr. Basant submitted that this is not a case where corroboration of sole testimony of PW-1 could not have been possible. He submitted that the police in its investigation did H

not find A-1 and A-2 at the house when the incident took place and any neighbour could have been examined as to whether A-1 and A-2 were present at the house when the occurrence took place. He submitted that in the absence of any corroboration of the testimony of PW-1, it is not prudent for the Court to convict A-1 and A-2 on the sole uncorroborated testimony of PW-1. He relied on the decision of the *Privy Council* in *Mohamed Sugal Esa Mamasan Rer Alalah v. The King* [AIR (33) 1946 PC 3] and the decisions of this Court in *Rameshwar* vs. *The State of Rajasthan* (supra), *Panchhi and Others v. State of U.P.* [(1998) 7 SCC 177] and *State of U.P. v. Ashok Dixit and Another* [(2000) 3 SCC 70] for the proposition that as a rule of practical wisdom, evidence of a child witness must find adequate corroboration before it is relied on.

13. Finally, Mr. Basant submitted that this Court in exercise of its powers under Article 136 of the Constitution does not interfere with the judgment of acquittal of the High Court only because it has a different view on the evidence and it only interferes where the judgment of acquittal of the High Court is clearly unreasonable or perverse or manifestly illegal or grossly unjust. In support of this proposition, he cited the decisions of this Court in *State of Karnataka v. Amajappa and Others* [(2003) 9 SCC 468], *State of Uttar Pradesh v. Banne alias Baijnath and Others* [(2009) 4 SCC 271] and *State of Haryana v. Shakuntla and Others* [(2012) 5 SCC 171]. He submitted that since the view taken by the High Court in the impugned judgment is a possible view on the evidence, this Court should not interfere with the judgment of acquittal passed by the High Court.

Findings of the Court:

14. In this case, the High Court has acquitted A-1 and A-2 of the offence under Section 302 read with Section 34 of the IPC after considering the evidence on record. In *State of Karnataka v. Amajappa and Others*, *State of Uttar Pradesh*

A *v. Banne alias Baijnath and Others* and *State of Haryana v. Shakuntla and Others* (supra), this Court has held that if the view taken by the High Court is reasonable or a possible one on the evidence on record, this Court will not reverse the judgment of acquittal of the High Court only on the ground that
B it had a different view of the evidence on record. Hence, the scope of this appeal under Article 136 of the Constitution is limited to finding out whether the view taken by the High Court that on the evidence on record, the conviction of A-1 and A-2 for the offence under Section 302 read with Section 34 of the
C IPC was not sustainable was a perverse or unreasonable view so as to call for interference by this Court under Article 136 of the Constitution.

15. The evidence of PW-1 on which the trial court relied on to convict A-1 and A-2 is quoted hereinbelow:
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"On the evening at about 7 PM after having food myself along with my mother and younger sister were laying awake in the room intermediate to the portico and kitchen. By the time A-1 and A-2 came to the room. We were
E awake. A-1 took me and taken to the portico and laid me on the sofa in the portico. A-1 took my sister and entrusted to A-5. By that time A-5 was standing outside the room near the door. Mother made hue and cry when younger sister is taken away. There is a window between the
F portico and the room in which we were sleeping. I peep in to the room through the window. I could see that A-2 was with holding my mother's knees. A-2 sat on the cot in which mother was sleeping. A-1 gagged cloth in the mouth of the mother. With a knife A-1 stabbed on the neck of the
G mother. Blood oozed from the wound. On seeing that I cried aloud. A-1 came out of the room and took me towards the kitchen. A-1 threatened me that if you divulge this to anybody you too would be stabbed to death similarly. From there I returned to Thazvaram (portico). I then saw
H that A-4 and A-6 were changing wearing apparels of

mother. By that time neighbors came there. Relatives and neighbors together took my mother to the hospital. I saw A-3 cleaning the room where mother slept. When a phone call received in the house of A-1, I came to know that mother is expired."

Thus, PW-1 has deposed that he was taken by A-1 from the room in which he, his younger sister and the deceased were sleeping to the portico and he peeped into the room through the window and saw that A-2 was holding his mother's knees and A-1 gagged cloth in the mouth of his mother and stabbed on the neck of his mother with a knife and blood oozed from the wound. The High Court noticed that PW-1 had said that if the window was not open he could not have seen the occurrence but PW-1 has admitted in his evidence that when they slept at night they used to close and bolt the doors and windows. The High Court further found that PW-1 had himself stated that prior to his deposition in Court, he had never told that he had seen the incident after opening the window panel. The High Court, therefore, did not accept this evidence of PW-1 to be true.

16. The High Court also found that PW-1 was only aged seven years on the date of the incident and he was examined in Court after lapse of seven years and after the incident he was under the care and guardianship of his mother's parents and the possibility of the parents of the mother tutoring PW-1 could not be ruled out. Even though the High Court has not recorded any clear finding that PW-1 had been tutored, we find that PW-1 has in fact avoided to answer some questions during cross-examination, which he could have easily answered. In cross-examination, questions were put to PW-1 whether he knew the name of the father's sister and whether that sister has a daughter by the name Thatha and whether Thatha's marriage took place 4-5 days prior to the incident and whether he knew that all the family members had gone for the marriage and PW-1 answered "*I don't know who is Thatha and which marriage is mentioned by you.*" Again in cross-examination, questions

were put to him on whether the window through which he saw the incident is permanently fastened by using reapers and PW-1 answered "*I do not remember.*" In cross-examination, a question was put to PW-1 whether A-2 accompanied while his mother was taken to the hospital and he answered "*I do not remember*". It, thus, appears from the evidence of PW-1 that he was not revealing the whole truth and avoided to answer uncomfortable questions which would have prejudiced the prosecution case. We, therefore, find that PW-1 was tutored and hence as per the decision of this Court in *State of Madhya Pradesh* vs. *Ramesh and Another* (supra) cited by learned counsel for the State, the evidence of PW-1 could not be relied on without adequate corroboration.

17. Under Section 157 of the Indian Evidence Act, the testimony of PW-1 could be corroborated by his statements about the time of when the incident took place. PW-1 has stated:

> "Police came on that night itself. Police has not asked anything to me, I did not told anything about the incident. Next day evening mother's body buried. Thereafter I went to mother's house. On that night I slept there. I slept there with elder aunt Sareena. On that night I cried remembering mother's memory, I told the whole incident witnessed to aunty. My maternal grand mother Nabeesa and my uncle Hamzaka (mother's brother) then came there. They also heard what I said."

From the aforesaid evidence of PW-1 it appears that PW-1 did not tell anything about the incident to the police on the date of the incident, though the police had come to the house where the incident had taken place. Next day evening after her mother's body was buried, he went to the mother's house and slept there with the elder aunt Sareena and on that night he cried remembering his mother and told the whole incident he witnessed to his aunt Sareena. Sareena has not been examined as a witness to corroborate the testimony of PW-1.

PW-1 has also said that his maternal grandmother, Nabeesa and his uncle Hamza then came there and they also heard what he said. Maternal grandmother of PW-1, Nabeesa has also not been examined to corroborate the testimony of PW-1. Only Hamza has been examined as PW-2 who has said that his mother and wife Sareena were told by PW-1 that his mother was murdered by A-1 by stabbing while A-2 held her. PW-2, however, has said that the husband of the deceased used to send money in the name of A-1 and A-2 and the deceased informed her husband that she has not received money and thereafter the husband of the deceased sent money in the name of the deceased and he had learnt all this from the deceased. From the evidence of PW-2 it is very clear that PW-2 had developed animosity towards A-1 and A-2 on account of what the deceased had told him about A-1 and A-2. Moreover, he has not been able to explain in cross-examination as to why when the incident took place on 26.02.1998, he filed the complaint before the Magistrate two years after on 26.02.2000 if the police had treated the case as one of suicide and not of homicide. Hence, even though the evidence of PW-2 corroborates the testimony of PW-1 his evidence cannot be relied on to lend assurance that PW-1 was giving a true version of the incident. From the deposition of PW-3 and Ex. P-11 (the scene plan of the house in which the incident took place), it appears that there were two windows in the room in which the incident took place, one window opening towards the portico and the other window towards the road. Hence, even if the window opening towards the road was closed, people on the road or the neighbours around the house must have come to know about the incident, but none among the people from the road or from amongst the neighbours around the house have been examined on behalf of the prosecution to corroborate the evidence of PW-1. In the absence of any corroboration of the oral testimony of PW-1, the High Court was right in taking the view that it is unsafe to convict A-1 and A-2 only on the evidence of PW-1, who was a child witness and whose evidence did not inspire any confidence.

A B C D E F G H

A 18. Learned counsel for the State is right that the consistent version of PW-1 is that A-1 and A-2 have committed murder of the deceased. But the High Court has rightly relied on the observations of this Court in *Suresh* vs. *State of U.P.* (supra) that children mix up what they see and what they like to B imagine to have seen. Glanville Williams says in his book '*The Proof of Guilt*', Third Edition, published by Stevens & Sons:

> "Children are suggestible and sometimes given to living in a world of make-believe. They are egocentric, and only C slowly learn the duty of speaking the truth."

Hence, the proposition laid down by Courts that as a rule of practical wisdom, evidence of child witness must find adequate corroboration [*Panchhi* vs. *State of U.P.* (supra)].

D 19. In *Suresh* vs. *State of U.P.* (supra) cited by Mr. Deepak, the evidence of child witness Sunil was corroborated by the conduct of the accused and from pattern of crime committed by him and hence this Court maintained the conviction of the accused servant for the murder of the mistress of the house E Geeta and her son Anil on the basis of evidence of a child witness, Sunil, as corroborated by other evidence. This Court specifically observed that if the case was to rest solely on Sunil's uncorroborated testimony, the Court might have found it difficult to sustain the conviction of the accused, but there was F unimpeachable and most eloquent materials on record which lent an unfailing assurance that Sunil is a witness of truth and not a witness of imagination as most children of that age generally are. Similarly, in *Promode Dey* vs. *State of West Bengal* (supra) cited by Mr. Deepak, the Court found that soon after the incident on 23.02.2002, the girl child had told her grand G mother and her father that it was the accused who had killed the deceased and her grandmother and father had deposed before the Court in their evidence that they had been told by this child witness that the accused had killed the deceased with a *dao*. The evidence of this child witness was also corroborated H by the fact that the blood stained *dao* was recovered on the

very day of the incident from a jungle by the side of the house of the accused. The evidence of the girl child that the accused had killed her mother by striking on her head, back, fingers and throat with a *dao* was thus believed by the Court because her evidence was adequately corroborated. In this case, as we have found, the evidence of PW-1 is not adequately corroborated.

20. Rather, as has been held by the High Court in the impugned judgment, the evidence of the medical experts cast a serious doubt on the reliability of the evidence of PW-1. PW-4, Lecturer in Forensic Medicine and Assistant Police Surgeon, Medical College Trichur, who conducted the *postmortem* examination of the body of the deceased and issued the *postmortem* certificate (Ex.P-12) has said "*I cannot definitely say whether it is a case of suicide or homicide.*" DW-1, Professor and Head of the Department of Forensic Medicine and Police Surgeon, Medical College, Trichur, has also opined in his medico-legal opinion Ex. D-1 "Under the circumstances, as per the medical evidence, the most likely manner of causation of injuries in this case is self infliction except for the fact that there is always a chance of any mechanical injury to be sustainable by homicidal manner." Thus, the aforesaid opinions of the two medical experts also do not lend assurance to the prosecution story that the death of the deceased was only homicidal. The opinion at page 387 of Modi's Medical Jurisprudence & Toxicology, Twenty-Second Edition, to which reference was made by Mr. Deepak, learned counsel for the appellant-Hamza, does not materially conflict with the expert opinions of PW-4 and DW-1. On the evidence of PW-1 read with the opinions of PW-4 and DW-1, the High Court could not have held that the prosecution has been able to prove beyond reasonable doubt that A-1 killed the deceased by stabbing her on the neck with the help of A-2. In *State of T.N. v. P. Muniappan* (supra) cited by learned counsel for the State, the High Court had observed that when a doctor expresses two views, the one that is favourable to the accused might be taken

A into account and this Court held that as a general proposition it may be true, but medical evidence could not be considered in isolation and must be taken into conjunction with all the circumstantial evidence on record. In that case, this Court found that seven circumstances led to only one conclusion that it is
B the respondent who was guilty and accordingly held that as the entire circumstantial evidence points to homicide only and the medical evidence is not to the contrary, the respondent was guilty of the offence under Section 302 IPC and set aside the acquittal of the respondent by the High Court and restored the
C judgment of conviction of the trial court. In this case, the police itself had investigated and filed a charge-sheet under Sections 498-A and 306 of the IPC against four members of the in-laws of the family of the deceased and found that it is a case of suicide. Thus, this is not a case where the only conclusion that
D could be drawn considering the entire evidence is that the death was homicidal and not suicidal. The decision of this Court in *State of Tamil Nadu v. P. Muniappan* (supra), therefore, has no application to the present case.

21. We, therefore, do not find that the view taken by the
E High Court that A-1 and A-2 were entitled to acquittal is perverse or unreasonable on the evidence on record so as to call for our interference under Article 136 of the Constitution and we accordingly dismiss the appeals.

K.K.T. Appeals dismissed.