2026:AHC-LKO:54077-DB

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Judgment Reserved on 29.07.2026

Judgment Delivered on 07.08.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

CRIMINAL APPEAL No. 578 of 1986

Munua Singh And Others		.....**Appellant**
	Versus	
State of U.P.		.....**Respondent**

Counsel for Appellant	T.N.Gupta, B.P.Srivastava, Mangal Singh
Counsel for Respondent	Govt. Advocate,

Court No. 29

HON'BLE RAJIV GUPTA, J.
HON'BLE ZAFEER AHMAD, J.

(As per Justice Rajiv Gupta)

1. Heard Sri Amrendra Singh Somvanshi, learned counsel for the appellants, Sri Piyush Kumar Singh, learned AGA for the State and perused the trial court record.

2. The instant criminal appeal has been filed against the judgment and order dated 10.9.1986 passed by Special and Additional Sessions Judge, Hardoi in Sessions Trial No. 618 of 1985 (State vs. Munua and others) arising out of Case Crime No.

41 of 1985, under Sections 302, 201 IPC, Police Station-Sandila, District-Hardoi, whereby appellants- Munua Singh, Raj Bahadur Singh and Bhagwan Bux Singh have been convicted for the offence under Section 302/34 IPC and awarded the sentence of life imprisonment and also under Section 201 IPC and awarded the sentence of 2 years' R.I. Both the sentences were directed to run concurrently.

3. During pendency of the appeal, accused-appellant Bhagwan Bux Singh had already passed away and his appeal has been abated by this Court vide order dated 4.3.2020 and now the appeal survives only for appellant No.1 Munua Singh and appellant No. 2 Raj Bahadur Singh.

4. Shorn of unnecessary details, the prosecution story as narrated in the first information report is that the first informant is resident of village-Jakhwa, Police Station-Atrauli and his cousins Munua Singh, Bhagwan Bux Singh and Raj Bahadur Singh sons of Laxman Singh are also resident of the same village.

5. It is further stated that his uncle Bachcha Singh was unmarried and issueless and, as such, had executed a registered adoption deed in favour of one Shiv Narayan Singh, real brother of the first informant about 13 years back on 4.11.1971 to be precise, however, a few days earlier the said fact was disclosed to the appellants and they also started asking for a share in his property, however, on his refusal started bearing animosity with

him.

6. It is further alleged that on 19.2.1985, his cousins Munua Singh, Bhagwan Bux Singh and Raj Bahadur Singh reached at his house and after taking dinner with his uncle Bachcha Singh, they went to sleep alongwith Bachcha Singh in the baithaka while he alongwith his wife and mother were sleeping in the house. The baithaka was illuminated with a dibri and his younger sister was also sleeping with Bachcha Singh.

7. It is further alleged that one Raghunath Singh, his next door neighbour, also used to sleep in the baithaka alongwith his uncle, however, on the penultimate day when he reached there at about 7-8 p.m. Munua Singh and others did not permit him to sleep there on the pretext of lack of space.

8. It is further alleged that Munua Singh and others were seen entering his house by Ghanshyam, Lallu and Surjan Singh. During night hours, Munua Singh and others by bolting the doors from inside, slept in the baithaka, however, in the morning when they woke up, his sister after unbolting the door rushed out weeping and informed him that their uncle has been killed by Munua Singh, Bhagwan Bux Singh and Raj Bahadur Singh by pressing his neck and thereafter he was dragged out of the door and taken away in the mid night hours and had threatened her not to raise any alarm, else she would also be done to death. Consequent thereto she did not raise any alarm.

9. It is further alleged that after getting the said information, he started making search of his uncle, however, his dead body was then found with a towel wrapped round his neck lying in the Potato and Mustard field of Jagdev Singh.

10. On the aforesaid allegations, a written report proved and marked as Exhibit-1 was drawn and the first informant reached the police station and lodged the report on 20.2.1985 at 10.05 a.m. vide Case Crime No. 41 of 1985, under Sections 302, 201 IPC proved and marked as Exhibit Ka-13, carbon copy whereof has been drawn vide G.D. Report No. 11 at 10:05 a.m. dated 20.2.1985, which has been proved and marked as Exhibit Ka-14.

11. The aforesaid first information report was registered in the absence of S.S.I Bheem Singh Maurya, who on getting information and relevant documents, namely check FIR, G.D. report etc., reached the place of incident at about 11:30 a.m. and recorded the statement of first informant Shiv Nath Singh and thereafter conducted an inquest on the person of the deceased and prepared the inquest report, which has been proved and marked as Exbt. Ka-2. Thereafter, Investigating Officer prepared the other relevant documents, namely, Letter to R.I., Photo Nash, Challan Nash, Form- 13, Letter to C.M.O. and sample seal, which have been proved and marked as Exhibit Ka-3 to Ka-6. The towel wrapped on the neck of the deceased was also taken in possession and its recovery memo was prepared, which was

proved and marked as Exbt. Ka-7.

12. Thereafter, Investigating Officer recorded the statement of P.W-2 Km. Manau and inspected the place of incident and prepared the site plan, which has been proved and marked as Exbt. Ka-8. One pair of shoes and one button of the shirt lying in the baithaka was also taken in possession by the I.O. who prepared its recovery memo, which has been proved and marked as Exbt. Ka-9 and Ka-10 respectively. The lamp lying in the baithaka was also taken in possession and its fard recovery memo was prepared, which has been proved and marked as Exbt. Ka-11. After conducting the inquest, the dead body was wrapped in a cloth and sent to the Mortuary for conducting the post-mortem. An autopsy was conducted on the person of the deceased on 21.2.1985 at 4:00 PM. In the post-mortem report, the Doctor has noted the following ante-mortem injuries on the person of the deceased, which are as under :-

1. Contusion 18 cms x 2 cm extending from the back of neck (from cervical spine) to front of neck and upto medial end of Rt. clavicle, 3 cms above it. This semi lunar contusion is 1 cm below the level of Cricoid cartilage.

2. Abrasion 0.5 cm x 0.25 cm on the back of left half, 15 cms below the inferior angle of Lt. Scapula.

3. Abrasion 0.25 cm x 0.25 cm on back,8 cms below injury no.2.

4. Abrasion 2.5 cm x 3.0 cms on the lateral side of Rt. thigh, 13 cms below Rt. iliac crest.

The internal examination revealed as under. The heart (right half) contained blood. The stomach contained about 200 grams of digested food. The small intestine contained gases and was empty. The large intestine contained small amount of faeces with gases. The gall bladder was empty. The bladder was also empty.

In the opinion of the doctor the cause of death has been noted to be Asphyxia due to strangulation.

13. The Investigating Officer after concluding the investigation, submitted the charge sheet against all the three accused persons on 2.3.1985, which has been proved and marked as Exbt. Ka-12.

14. On the basis of the said charge-sheet, learned Magistrate had taken cognizance of the case, however, since the case was exclusively triable by the court of Sessions, after complying the provisions of Section 207 Cr.P.C., committed the case to the court of Sessions for trial, where charges were framed against the accused persons on 20.12.1985 under Sections 302 read with section 34 IPC and 201 IPC. All the three accused persons abjured their guilt and claimed to be tried.

15. The prosecution in order to prove the guilt against the appellants, had examined three witnesses of fact, namely, Shiv Nath Singh, first informant (P.W-1), Manau, sister of the first informant as P.W.-2 and one Lallu Singh as P.W.-3.

16. Apart from them, two formal witnesses, namely, Bheem Singh Maurya was examined as P.W.-4 being the Investigating Officer and Dr. Jitendra Singh, Medical Officer, who conducted the autopsy on the person of the deceased, was examined as P.W.-5, however, accused did not led any defence evidence.

17. Upon closure of the prosecution evidence, the statement of the accused persons were recorded under Section 313 CrPC,

affording an opportunity for explaining the incriminating circumstances against them.

18. The accused-appellants, in reply to the Question No.16, stated that on account of inimical terms, they have been prosecuted and denied the other suggestions.

19. Upon consideration of the arguments advanced by the prosecution and the defence and after appreciating the evidence available on record, the trial court vide judgment and order dated 10.9.1986, convicted all the three accused-appellants for the offence under Section 302 read with section 34 IPC and sentenced them for life imprisonment and also under Section 201 IPC and sentenced them for two years Rigorous Imprisonment.

20. Being aggrieved and dissatisfied by the said judgment and order dated 10.9.1986, the instant criminal appeal has been filed by the accused-appellants, challenging the order of conviction and sentence.

21. Learned counsel for the appellants has vehemently and firmly urged that the trial court fell in grave error in recording the finding of conviction and sentence against the accused-appellants by placing implicit reliance upon the testimony of a solitary witness P.W.-2 Manau, who too is a child witness eight years of age and is difficult to believe in the given facts and circumstances of the case, as such, the impugned judgment and order is bad in law and liable to be set aside.

22. Learned counsel for the appellants has next contended that even according to the prosecution own case, the incident in question has taken place in mid night hours in a baithaka while the sole eye witness Manau (P.W.-2) aged about 8 years was sleeping and in the backdrop of the said circumstances, there is remote chance of her being the eye witness of the incident as projected by the prosecution, however, the trial court by placing implicit reliance upon her testimony has recorded the finding of conviction and sentence against the appellants, which is bad in law and is liable to be set aside.

23. Learned counsel for the appellants while relying upon the decision of Hon'ble Apex Court in the case of **Pradeep Vs. State of Haryana reported in (2023) 19 SCC 221,** has pointed out that it is well settled principle of law that before recording the evidence of a minor, it is duty of the Trial Judge to conduct preliminary examination of the child witness to ascertain if the child is able to understand the questions put to him and that he is able to give rational answers to the questions put to him.

24. Furthermore, the Trial Judge must record its opinion and satisfaction 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. It is further held that the questions put to the child in the preliminary examination must also be recorded so that the appellate court can go into the

correctness of the opinion of the trial court, however, in the present case, the said settled proposition of law has been completely ignored, which creates a serious dent in the prosecution story and renders the testimony of child witness Manua (P.W.-2) highly doubtful, and in view thereof, the trial court could not have recorded the finding of conviction and sentence against the appellants, as such, the impugned judgment and order is bad in law and is liable to be set aside.

25. Learned counsel for the appellants has further submitted that the Hon'ble Apex Court in several of its decision commenting upon the testimony of child witness, has held that child witnesses are amenable to tutoring and often live in a world of make-believe and it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded and, therefore, their testimony is to be scrutinized in a very careful manner by following the settled principle of law regarding the reliability of child witness, however, in the present case, the trial court ignoring the said principle of law has placed implicit reliance upon the testimony of child witness, who obviously has been tutored by P.W.-1 Shiv Nath Singh, his elder brother, which is evident from the circumstances, in which, the said witness has deposed before the Court and therefore, the testimony of P.W.-2 cannot be relied upon without any corroboration and in the absence thereof, the

impugned judgment and order passed by the trial court suffers from patently illegality and perversity and, therefore, is liable to be set aside.

26. Learned counsel for the appellants has next submitted that even according to the prosecution own case, the instant case is based on sole testimony of P.W.-2, who is a child witness and even according to the prosecution own case, the other witness P.W.-1 Shiv Nath Singh, who is the brother of P.W.-2, is not an eye witness of the incident and has deposed only on the basis of narration made to him by P.W.-2 and thus, his testimony is based on hearsay evidence and as per the settled principle of law is not of much significance, however, the trial court by placing reliance upon his testimony has recorded the finding of conviction against the appellants, which is bad in law and liable to be set aside.

27. Learned counsel for the appellants has further submitted that other witness P.W.-3 Lallu Prasad has not supported the prosecution story at all and has been declared hostile and, as such, no credence can be attached to his testimony and his testimony is liable to be discarded.

28. To buttress his arguments, learned counsel for the appellants has further relied upon the decision of Hon'ble Apex Court in **Criminal Appeal No. 2203 of 2010; Radhey Shyam & others Vs. State of Rajasthan** and thus, submitted that the impugned judgment and order passed by the trial court suffers

from patent illegality and infirmity and is therefore, liable to be set aside by allowing the instant criminal appeal.

29. Per contra, learned AGA has supported the impugned judgment and order and has candidly submitted that the incident, in question, has been witnessed by PW-2 and she in her testimony have completely corroborated the prosecution story in all material particulars and defence has not been able to point out any material contradictions in her testimony and has further submitted that though it is an established principle that child witnesses are dangerous witnesses and liable to be influenced easily, but at the same time 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 her testimony, there is no obstacle in the way of accepting the evidence of a child witness.

30. Learned AGA has further submitted that the child witness in the instant case has given cogent and clear evidence against the appellants in her testimony, which establishes their guilt and, therefore, merely on the ground that P.W.-2 is a child witness, her testimony cannot be discarded and the trial court rightly by placing reliance upon her testimony, has recorded the finding of conviction and sentence against the appellants, which does not suffer from any illegality or perversity and, therefore, is liable to be upheld.

31. We have given our thoughtful consideration to the submissions advanced at Bar and have carefully gone through the impugned judgment and order and the material available on record, this Court would proceed to consider the appeal at hand, particularly, if there is any manifest error or illegality in the impugned judgment and order. It is undisputed that in the instant appeal, the prosecution case is based upon sole testimony of P.W.-2 Manau, who is a child witness aged about 8 years and her testimony therefore is required to be closely scrutinized keeping in view the settled principle of law laid down by the Hon'ble Apex Court in this regard.

32. It is germane to point out here that in the instant case while going through the testimony of P.W.-1, we find that even according to the prosecution's own case, he is not an eye witness of the incident and his entire testimony in respect of the incident in question is based on the narration made to him by his sister P.W.-2 Manau and thus we have no hesitation to hold that his entire testimony is based on hearsay evidence, which is not of much significance so as to record the finding of conviction against the appellants. As matter of fact the instant case is based on the sole testimony of P.W.-2, who is a child witness hardly 8 years of age and a female child, therefore in view of the settled principles of law we will have to very carefully examine the reliability and veracity of her testimony in light of the other evidence led by the

prosecution.

33. According to the prosecution own case, P.W.-2 Manau at the relevant time of incident is said to be sleeping on the stretched stalk of paddy alongwith her uncle and the three other assailants in the baithaka, where the incident of killing her uncle is said to have occurred in the mid night hours. It is further stated by P.W.-2 Manau that hearing some noise on the stalk of paddy, she woke up and saw appellant Bhagwan Bux Singh was holding her uncle by his legs whereas appellant Raj Bahadur Singh was holding him by his hand and appellant Munua was trying to gag him by a towel wrapped all around his neck and when his uncle tried to wriggle out from the clutches of three assailants then she started weeping, however, she was threatened not to weep or raise alarm, else she would also be done to death, as such she remained silent. In the morning she disclosed the incident to his brother and other family members, whereupon his brother went out of his house to make a search of his uncle and found his dead body lying in patato and mustard field of Jagdev Singh.

34. It is further stated in her testimony that Munua Singh dragged her uncle upto the door and then lifted him and had taken him out of the baithaka.

35. During cross examination, she testified that on the next day, his brother went to the police station alongwith a paper, wherein he had written what she has stated. She had narrated to his

brother that Bhagwan Bux was holding the legs, Raj Bahadur was holding the hands and Munua had wrapped a towel round his neck. She further reiterated that at the relevant time, he had stated to his brother that Munua had taken his uncle out of the baithaka on his back. She further testified that “मैंने मुल्जिमान से नहीं कहा कि चाचा को न मारो। मारने के बाद मुल्जिमान ने चाचा को हाथ से पकड़ा और घसीटते हुए ले गए ऐसा नहीं हुआ कि दरवाजा खोलने के बाद चाचा को खींचते हुए मुल्जिमान बाहर को ले गए हों।” During cross examination, P.W.-2 Manua further categorically stated that the assailants while leaving the baithaka had not bolted the door from outside. To be precise, she stated that “जाते वक्त मुलजिमान ने बाहर का दरवाजा ओढ़का दिया था। दरवाजा ओढ़काने के बाद सुबह तक मैं सोई नहीं थी। सुबह तक न मैं चिल्लाई न अपने भाई को आवाज दी।"

36. This conduct of the P.W.-2, who admittedly is a girl child aged about 8 years does not inspire confidence. Admittedly, according to her testimony, all the assailants had left the baithaka after dragging the deceased out of it and did not return back. She further testified that after the assailants left baithaka, she remained awake till dawn but neither raised any alarm nor sought any help from his mother and sister in-law and brother, who admittedly were sleeping in the same premises and only in the morning, she stepped out of the baithaka and informed her brother and her family members about the incident.

37. In fact from the circumstances as narrated by P.W.-2 in her

testimony, had she seen the three assailants killing her uncle by gagging his neck through a towel, her first reaction would have been to raise alarm and to seek help of his brother and other family members, particularly, when the assailants had left the baithaka alongwith the deceased in the mid night itself. This peculiar behaviour of P.W.-2 clinchingly suggests that in fact either at the relevant time she was not present in the baithaka to have witnessed the incident or remained sleeping throughout the night and in the morning when she woke up and did not find her uncle then informed her brother, who on making search found him dead lying in the Potato and Mustard field of Jagdev Singh and subsequently on being tutored by her brother, she has made a false deposition as contained in his statement recorded as P.W.-2 and therefore, in the backdrop of the said circumstance, her testimony cannot be said to be of unimpeachable character and in the absence of any corroboration by any other witness it does not inspire confidence. Moreover, the prosecution case is based on the sole testimony of P.W.-2 Manau, and as per the settled proposition of law, the testimony of said witness should be of a very high quality and calibre, whose version should therefore be unassailable and be of “sterling quality” as held by the Hon’ble Apex Court in the case of **Rai Sandeep @ Deepu Vs. State (NCT of Delhi) reported in (2012) 8 SC 21**, however, keeping in view that the said witness is a child witness and considering his testimony as a whole, she appears to be a confused and tutored

witness as such, her testimony does not fall in the category of “sterling quality”, therefore we are of the opinion that relying on her sole testimony, the finding of conviction could not have been safely recorded in the instant case. The contrary view taken by the trial court therefore cannot be said to be just, proper and legal hence is liable to be reversed.

38. Moreover, as per the settled principle of law laid down by the Hon’ble Apex Court in several of its decision that before recording the evidence of a minor, it is duty of the Trial Court to conduct preliminary examination of the child witness to ascertain if the child is able to understand the questions put to him and that he/she is able to give rational answers to the questions put to him and furthermore, the Trial Judge is required to record its opinion and satisfaction 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. Moreso the questions put to the child in the preliminary examination must also be recorded so that the appellate court can go into the correctness of the opinion of the trial court, however, in the present case, we find that this settled proposition of law has been completely ignored by the trial court and no preliminary examination of the child witness has been recorded, which further creates a serious dent in the veracity of the testimony of the child witness and the possibility of she being a tutored witness cannot be ruled out, which makes her

testimony further doubtful and difficult to believe, particularly, when her testimony has not been corroborated by any other witness and in the absence of which the accused appellants are entitled for benefit of doubt.

39. It is further pertinent to note here that as per the prosecution case, the three assailants are said to have reached the place of incident during the evening hours and they are alleged to have been seen by Ghanshyam, Lallu and Surjan Singh. Out of the said three witnesses, Lallu has been produced as P.W.-3 during the course of trial, however, when we go through his testimony, we find that he has not supported the prosecution story at all and has candidly stated that " मैंने मुल्जिमान को बच्चा सिंह के घर घटना के एक दिन पहले शाम को जाते नहीं देखा था।" and on the basis of said testimony, he has been declared hostile and during the cross examination, on his attention being drawn to his statement shown to be recorded under Section 161 Cr.P.C. stating the said fact, he has categorically denied the same and stated that he could not state as to how the said statement was recorded by the I.O. On being cross examined by the defence, he has further candidly stated that the accused persons never visited his village. Thus, statement of P.W.-3 further creates a serious doubt about the presence of the assailants committing the offence and makes the prosecution further doubtful in the absence of any corroboration by any other witness.

40. It is further germane to point out here that even according to the prosecution own case, the deceased Bachcha Singh, who was unmarried and issueless had already executed a registered adoption deed dated 4.11.71, by which, he had adopted Shiv Narayan @ Ram Naresh, younger brother of P.W.-1 as his adopted son and in the backdrop of the said circumstance, there could be no occasion for the three assailants, who are real brothers to have caused the death of Bachcha Singh as after his death as per the adoption deed Shiv Narayan @ Ram Naresh would have inherited his movable and immovable property and in no case his property would have been devolved upon them and they could not have been the beneficiary in any manner, as such, the motive as suggested by the prosecution for committing the death of Bachcha Singh stands falsified, which further creates a serious dent in the prosecution case and makes it unreliable.

41. Thus, when we take a holistic view of the facts and circumstances of the case keeping in mind the testimony of P.W.-1, we find that his testimony is based on the hearsay version and is therefore not of much significance so as to record the finding of conviction against the appellants, so far as the testimony of P.W.-2 Manau is concerned, we find that she being a child witness and possibility of her testimony being tutored by his elder brother and not being of unimpeachable character and of “sterling quality” with number of legal lacunae as pointed out in the earlier part of the

judgment, her sole testimony cannot be relied upon without any corroboration, as such, the appellants are entitled for benefit of doubt moreso when from the testimony of P.W.-3 the presence of the appellants in the baithaka causing the death of deceased becomes highly questionable and difficult to believe, as such, we are of the opinion that in the facts and circumstances of the case, the appellants are entitled for the benefit of doubt and the recorded conviction and sentence against the two surviving appellants is liable to be reversed.

42. In view of the foregoing discussions, we are of the opinion that the prosecution has failed to prove the charges against the appellants beyond all reasonable doubt, and both the surviving appellants are entitled for benefit of doubt. Consequently, the appeal is **allowed**. The judgment and order passed by the trial court convicting and sentencing the appellants is **set aside**. The accused-appellants are acquitted of the charges, for which, they had been tried and convicted. The appellants are on bail. They need not surrender and their bail bonds stand cancelled and sureties discharged.

43. Let a copy of this judgment and order be sent to the court concerned alongwith the trial court record for information and necessary compliance.

(Zafeer Ahmad, J.) (Rajiv Gupta, J.)

August 7, 2026
KU/-

Digitally signed by :-
KALIM UDDIN SIDDIQUI
High Court of Judicature at Allahabad,
Lucknow Bench