

**HIGH COURT OF JUDICATURE AT ALLAHABAD****CAPITAL CASES No. - 14 of 2025***With***Reference No. 11 of 2025****A.F.R.**

Judgment reserved on 20.8.2026

Judgment delivered on 22.9.2026

Priyanka

.....Appellant(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Appellant(s)	:	Gunjan Sharma
Counsel for Respondent(s)	:	G.A.

*With***JAIL APPEAL No. - 317 of 2025**

Ashish @ Daini

.....Appellant(s)

Versus

State Of U.P. Through Prin. Sec.Home Govt. Of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Babita Upadhyay
Counsel for Respondent(s)	:	G.A.

Court No. - 29**HON'BLE SIDDHARTHA VARMA, J.****HON'BLE JAI KRISHNA UPADHYAY, J.**

1. Heard Sri Saghir Ahmad, learned Senior Counsel, who has been appointed as Amicus Curiae. He was assisted very ably by Ms. Gunjan Sharma and Sri Rajarshi Gupta, learned counsel for the appellants in Capital Cases No. 14 of 2025. Ms. Babita Upadhyay, learned counsel for the appellant was heard in Jail Appeal No. 317 of 2025. Sri Amit Sinha, learned Additional

Government Advocate was heard for the State.

2. The instant Capital Case has been preferred against the judgment and order dated 05/10.07.2025 passed by the Additional District and Sessions Judge, Room No.3, Auraiya, convicting the appellants, Priyanka and Ashish @ Daini, under Sections 302 read with section 120-B of the Indian Penal Code (*hereinafter referred to as "I.P.C."*) and sentencing them for life imprisonment with a fine of Rs. 1,00,000/- each. In default of payment of fine, they had to undergo 2 years additional rigorous imprisonment. The accused Priyanka was further sentenced to death for the offence under Section 302 of I.P.C. with a fine of Rs. 1,00,000/- and the accused Priyanka was ordered to be hanged by the neck till she was dead. In default of payment of fine, she had to undergo 2 years additional imprisonment.

3. On 27.06.2024 at 05:00 AM, three children had died. Madhav @ Gunga was 6 years of age, Aditya @ Tilla was 5 years of age and Mangal was 4 years of age. The information with regard to their death was conveyed to the police by the Gram Pradhan, Jitendra Bhushan son of Ram Pal, Village Talepur, Thana Kotwali, Auraiya. This reaching of the information by the Gram Pradhan was recorded by the G.D. No. 36 of Thana Kotwali. The G.D. entry was made at 13:44 hours and the date was 27.06.2024. This had put the police into motion despite the fact that the information given by Gram Pradhan, Jitendra Bhushan was not considered as an F.I.R. and was not lodged as such. Consequent to the application given by the Pradhan, Jitendra Bhushan, the police had gone to the site i.e. the spot where the alleged incident had occurred, the bridge of Sengur River. From there the dead-bodies of the three children, namely, Madhav @ Gunga, Aditya @ Tilla and Mangal were recovered. The panchayatnamas of the dead-bodies were conducted on the bank of the Sengur River itself. The panchayatnama had commenced at 13:41 hours and had come to an end at 14:25 hours. In the panchayatnama, there was no mention of any case crime number. The first panchayatnama was of Aditya @ Tilla which was exhibited as Exhibit Ka-4, the second was of Madhav @ Gunga and was exhibited as Exhibit Ka-9 and

the third was of Mangal which was exhibited as Exhibit Ka-14. All the panchayatnamas had virtually commenced at the same time and had come to end also virtually at the same time. The common factors in all the panchayatnamas was that they did not carry any case crime number and the witnesses of the panchayatnamas were though different but were not the family members. In the panchayatnama of Aditya @ Tilla, the witnesses of the panchayatnama were Shashank son of Satyendra Singh, Ashit Kumar son of Rajveer Singh, Rajveer son of Subhash Chandra, Ramchandra son of Mahadev Prasad and Ramesh son of Bhoop Singh. In the panchayatnama of Madhav @ Gunga, the witnesses were Brij Mohan son of Brihman Singh, Shivraj son of Raj Narayan, Jaydev son of Rajaram, **Jitendra Bhushan son of Ram Pal (Pradhan)** and Vinod Kumar son of Baladeen. In the panchayatnama of Mangal, the witnesses were Manjesh Pandey son of Vinod Kumar, Shravan Lal son of Sukhbasi Lal, Narendra Mishra son of Ram Lakahan, Beche Lal son of Sita Ram and Aditya Kumar son of Laik Singh. Thereafter, post the panchayatnama along with the report of Pradhan, Jitendra Bhushan, the dead-bodies were sent for post-mortem and the post-mortem was conducted on 27.06.2024 itself and the post-mortem reports were exhibited as Exhibit Ka-9A, Exhibit Ka-10A and Exhibit Ka-11A. None of the post-mortem reports contained any mention of the case crime number.

4. However, on 27.06.2024 itself at around 18:44 hours, an F.I.R. was lodged by Manish, uncle of the deceased children and it was alleged in the F.I.R. that the accused named therein i.e. Priyanka on 27.06.2024 at around 05:00 AM in collusion with the younger brother of her husband Ashish @ Daini (co-accused) had taken her four sons, Sonu, Aditya, Madhav and Mangal to Talepur bridge which was on the Sengur river and had tried to kill them all. However, Sonu somehow had escaped the attempt of his mother and uncle and had run away from that place. The other three children Aditya, Madhav and Mangal had died. He gave the reason for the murder that his sister-in-law (*bhabhi*) Priyanka, whose husband Avnish had died two years

prior to the incident, was in love with Ashish @ Daini and they both wanted to get rid of the children so that they could continue with their illicit relationship. He had stated that this information was given to him by the child who had remained alive i.e. Sonu, who was 9 years of age when he had reached the place of incident early in the morning. He had further stated that when his sister-in-law Priyanka had taken the four children to the river, many independent witnesses had also seen her taking the children there and, therefore, he had prayed for action to be taken against the guilty.

5. The police had, however, continued to investigate the matter and, as has been narrated above, the panchayatnama had already taken place and the post-mortem reports had also been prepared even before the FIR was lodged. Thus, on the basis of the evidence collected, police report was submitted and sent to the Court. It may be mentioned that in the police report, which was submitted by the police, the name of Jitendra Bhushan, Gram Pradhan, who had informed the police about the incident, had been shown at serial no. 11. Also, there was one relevant person called Vipin Kumar whose name was shown as a witness at serial no. 20 in the charge-sheet. The court thereafter upon taking cognizance of the matter had framed charges against the accused Priyanka and Ashish @ Daini under Sections 302, 307, 120-B of I.P.C. on 22.08.2024. Against the accused Priyanka on 22.08.2024 itself another charge was framed under Section 302 and 307 of I.P.C. Upon the denial of the charges, the trial commenced. From the side of the prosecution as many as 7 prosecution witnesses were examined.

6. PW-1 was the first informant, Manish, who had lodged the F.I.R. on 27.06.2024 at 18:44 hours. PW-1 had stated that his elder brother Avnish had died around two years prior to the date of incident and that he had left behind four children, namely, Sonu, Aditya, Madhav and Mangal. The four children along with the mother had gone to stay at Gram Barauwa in the District Auraiya. However, one year prior to the date of incident, the sister-in-law along with her four children had continued to stay at Auraiya and with his sister-in-law, a cousin brother of the first informant Ashish @ Daini

was also staying. His sister-in-law and his cousin brother Ashish were having an illicit relationship and they wanted to remove the four children from their lives. He had stated that the incident had occurred at 05:00 AM and Ashish and Priyanka in a planned manner had taken the four children to Gram Talepur near a bridge which was across the river Sengur and there they tried to drown the four children. However Sonu, the eldest of the four, saved his life and ran away while the other three died. However, the child who was alive had come and informed the PW-1 about the entire incident. He had stated that he had got the F.I.R. lodged on his dictation by someone else and he proved the *tehrir* also. He had thereafter stated that police had also recorded his statement. He had further stated that he had himself shown the site to the police and thereafter the child, who was alive i.e. Sonu, was given in the *supurdagi* of his sister Jyoti (bua of the child).

In the cross-examination, he had stated that he had lived either in the village Badanpur, Auraiya or in the Village Luhiya Kala, Etawah. He had mentioned the name of his friend Aditya Yadav who had scribed the F.I.R. He had further stated that when he had gone to lodge the F.I.R., it was around 03:00 or 04:00 PM in the evening. In the cross-examination, he had further stated that the information with regard to the death of the three children was given to the police by the Pradhan of Keshampur and that he had also received the information from there itself. However, he had stated that he did not know the name of the person who had informed him. He had stated that he had got the information 3 to 4 hours before the F.I.R. was lodged and upon getting the information he had gone to the place of incident at around 09:00 AM. The police was already there and the police had told him again about the incident. He had stated that he had reached the police station along with his friend Aditya Yadav and the panchayatnama was also drawn in his presence but he did not remember that he had signed on the panchayatnama. Thereafter, he had stated that it was Priyanka's aunt (*chachi*) who had informed him about the incident. This fact that the Priyanka's aunt had informed him, he was telling the court for the first time

and had not even mentioned it while he was getting his statement recorded under Section 161 of Cr.P.C. He also did not know as to whether the F.I.R. was lodged prior to the panchayatnama or the panchayatnama was drawn after the F.I.R. was lodged and that when he had reached the place of incident there were around 50-60 police officials and around 200 people from the public. He had stated that the Village Talepur was around 7-8 kilometres away from Auraiya and from Talepur the river was around two kilometers away. In the summer, Sengur river was not entirely dried but had some water and people could also cross the river walking as there was scarcity of water. He had categorically stated that he had never got the site plan drawn by the police "मैंने पुलिस को कभी घाटस्थल का नक्शा नहीं बनवाया।" (*This statement appears at page no. 76 of paper book*). He had stated that when he had reached the place of incident, the police had already arrested Priyanka. Ashish was arrested three to four hours later. The accused Ashish @ Daini was working in a hair cutting salon. He had further answered to various questions and one of the questions he had answered was that Priyanka's husband Avnish had died due to electrification and Priyanka had also got compensation which was not shared by any of the other family members. Priyanka was staying in her mayka in the Village Barauwa, Auraya. He had then stated that he had never met Ashish and Priyanka at her house but he had met them at the shop. He had then stated that he was at the site where the panchayatnama was being conducted.

7. PW-2, Sonu, was a young child of around eight years of age. After having tested his capacity to give the evidence, he was made to get his statement-in-chief recorded. He had stated that his father had died and he had three more younger brothers. One month prior to the date of incident, he had started staying at Auraiya along with his mother and younger brothers. He had then stated that along with his mother, Ashish, his uncle, used to come and stay. Ashish was also called Daini. He used to stay with his mother and also used to quietly talk to her. He had then stated that his mother had taken him and his three other brothers to the river in the morning. His mother had taken

them on the pretext that she was taken to their *nani's* place. However, instead of taking them to their *nani's* place, she had taken them to the river and had tried to drown them one by one. Three brothers had died due to drowning but he had saved himself, as he had feigned that he had died. The mother having thought that the four children had died, had left the place of incident. About himself he had stated that he had thereafter contacted a person who was grazing goats and that person had directed him to a particular lane where he had said that PW-2 would get help and in the lane he got in touch with one Pradhan, who took him to his house and there he had told him about the entire incident. Thereafter, the Pradhan had rung up the police and thereafter the police had come to the house of the Pradhan and had taken PW-2 to the Thana. He had also stated that Manish, the first informant, was his uncle and he had told him about the incident and he had got the F.I.R. lodged. Thereafter, the police had arrested his mother and his uncle Ashish who were now in jail. When the police had asked him about all this, then he had also told the police everything.

In the cross-examination, he had denied that his *bua* and *chacha* had tutored him. He could not tell about the date and time of the incident but he could tell the place of the incident. He denied the suggestion that the three children had died while he had taken them to the river.

8. PW-3, Dinesh Kumar Yadav, was the Constable who had proved the chik and the G.D.

9. PW-4 was the Sub-Inspector Mohd. Shakeel Khan. He had proven the panchayatnama as he was present at the time of the preparation of the panchayatnama.

10. PW-5 was Dr. Saurabh Kumar and he had conducted the post-mortem. He had reported that the three children had died because of drowning.

11. PW-6 was Sub-Inspector Harish Kumar. He had prepared the panchayatnama of deceased child Mangal.

12. PW-7 was the Investigating Officer Bhupendra Singh Rathi. He had very categorically stated that he had prepared the site plan on the pointing of the first informant "वादी मुकदमा की निशानदेही पर घटनास्थल का निरीक्षण किया तथा नक्शा-नजरी तैयार किया जो कि पत्रावली पर कागज संख्या - 15क/1 है।" (*This statement appears at page no. 99 of paper book*). He had then stated that he had recorded the statements of the eye-witness Sonu, first informant Manish and also the statements of *bua* and fufa of the eye-witness namely Smt. Jyoti and Rajveer. He had stated that the statements were recorded on 05.07.2024 by Parcha No. 3. The relevant portion of the statement where he had stated that he had recorded the statement on 05.07.2024 is being reproduced here as under:

"दिनांक - 05.07.2024 को पर्चा नंबर - 03 में बालक सोनू अपने चाचा मनीष कुमार व बुआ ज्योति तथा फूफा राजवीर के साथ उपरोक्त मुकदमे की जानकारी करने के लिए थाना उपस्थित आया बालक सोनू की बुआ श्रीमती ज्योति व फूफा राजवीर से पूछताछ कर उनके बयान अंकित किये गए। "

On 06.07.2024, he had stated that he had recorded the statement of the Gram Pradhan, Jitendra Bhushan, and also the statements of Brij Mohan, Shivr, Jaydev and Vinod Kumar by Parcha No. 5

In the cross-examination, he had stated that first time he had got the information about the death of the three children by the Pradhan Jitendra Bhushan of Talepur in the form of an application for taking action and for this purpose Pradhan Jitendra Bhushan had come to his place alone. Upon getting that information he had reached the place of incident. The statement by which he had stated that the Gram Pradhan had given the information is being reproduced here as under:

"सबसे पहले बच्चों के शव सेंगर नदी में मिलने की सूचना जितेंद्र भूषण प्रधान, तालेपुर द्वारा दी गई थी और वह सूचना प्रार्थना-पत्र के रूप में थी। सूचनाकर्ता जितेंद्र भूषण अकेले आया था अथवा उसके साथ अन्य लोग भी आए थे, यह मुझे इस समय याद नहीं है। मैं उस समय थाने पर मौजूद था। जितेंद्र भूषण द्वारा सूचना दिए जाने के उपरांत मैं घटनास्थल

के लिए रवाना हुआ था।"

Thereafter, he again stated that the *naksha-najri* was prepared on the pointing of Jitendra Bhushan, Gram Pradhan. The particular statement in which very confusingly the PW-7 stated that he had got the map prepared on the pointing of Jitendra Bhushan and also on the pointing of the first informant is being reproduced here as under:

"जो नक्शा नजरी मैंने जितेन्द्र भूषण की निशानदेही पर बनाया था वह नक्शा-नजरी मैंने पत्रावली में सीडी के साथ संलग्न किया था फिर कहा कि जितेन्द्र भूषण ने मुझे घटनास्थल दिखाया था नक्शा नजरी मैंने वादी की निशानदेही पर बनाया था वही नक्शा नजरी मैंने सीडी के साथ संलग्न किया था। जब मैं घटनास्थल पर गया था तब मैंने वहाँ बच्चों की डेड बॉडी देखी थी। मृतक बच्चों के शरीर पर बाह्य चोटों का कोई निशान नहीं था। बच्चों के पेट से पानी निकलता था या नहीं यह मुझे याद नहीं है।"

He had further stated that he had not, in the map, indicated as to how deep was the river and about the depth of the river he had not mentioned anywhere in any of the case diary reports.

13. Thereafter the statements of the two accused were got recorded under Section 313 of Cr.P.C. When the judgment and order dated 05/10.07.2025 was passed wherein the accused were found guilty and the accused Priyanka was awarded death sentence and Ashish was awarded life imprisonment alongwith certain fines, a Reference was sent to this Court being Reference No. 11 of 2025. Along with the Reference, the Criminal Appeal no. 317 of 2025 was also filed.

14. Sri Saghir Ahmad, learned Senior Advocate assisted by Ms. Gunjan Sharma and Sri Rajarshi Gupta, learned counsel for the appellants has made the following submissions:

(i) Learned counsel for the appellants has argued that in fact the PW-2, the child witness, was not a reliable witness. To support this argument, he states that the child witness PW-2 was such a witness whose presence is doubtful at the place of incident. He has submitted

that had PW-2 been there at the place of incident, he would have immediately contacted his uncle and the uncle thereafter would have reached the place of incident immediately whereas the fact was that the uncle had in fact reached the place of incident at around 09:00 AM and thereafter had remained there for three to four hours. Learned counsel for the appellants states that had the uncle been informed, he would have lodged the F.I.R. immediately.

(ii) What is more, the learned counsel for the appellants states that PW-7, the I.O. had testified in the Court that he had in fact been informed by the Pradhan, Jitendra Bhushan and, therefore, he had reached the place of incident at around 08:30 to 09:00 AM and that was also on the information given by Jitendra Bhushan Pradhan of Talepur, who had given a written application informing him about the deaths. He had very categorically stated that the Pradhan had come to his Thana alone. Whether others were also there he did not remember. Learned counsel for the appellants states that had the uncle been at the place of incident, he would have been definitely noticed by the I.O. whereas on the contrary PW-7, the Investigating Officer, has very categorically stated that in fact no family member was there and only people of the general public were there. Learned counsel for the appellants further states that if the accused mother had made a plan along with her paramour to kill the children, then the first thing they would have done was to have had killed the PW-2 himself. They would never left a witness who would have been dangerous for them later on.

Learned counsel for the appellants further states that PW-2 had stated that he had gone to inform the Pradhan. However the Pradhan had never stated in his application dated 27.06.2024 that he was given the information by PW-2. Learned counsel for the appellants further states that even if the Exhibit Ka-2A i.e. the G.D. No. 41 is perused, then it becomes clear that the child had not accompanied his uncle, PW-1,

who had gone to lodge the F.I.R. Still further learned counsel for the appellants states that on 05.07.2024, the statements of PW-2 along with his *bua* and *fufa* were recorded. He therefore states that there was every possibility of PW-2, the child, getting tutored in between 27.06.2024 and 05.07.2024. The fact that the statement of PW-2 was recorded on 05.07.2024 becomes very clear from the statement of the PW-7 at page no. 99 of the paper book.

(iii) Learned counsel for the appellants states that in the F.I.R. PW-1 had stated that it was a child witness PW-2, who had informed him about the incident. He states that if that was the case then the incident which had occurred at 05:00 AM would not have got reported at 18:44 hours. The fact mentioned in the F.I.R. that the PW-2 had informed the PW-1 and therefore he was getting the F.I.R. lodged also becomes falsified by this fact that when the Investigating Officer had gone at around 09:00 AM to the site then neither the uncle nor the PW-2, the child, was present there. Learned counsel for the appellants states that if the panchayatnama is seen then fifteen different persons have become the panchayatnama's witnesses in the three panchayatnamas. None of the family member was there in the panchayatnama. In fact, in the panchayatnama of Madhav @ Gunga, the Pradhan Jitendra Bhushan was also a witness at serial no. 4. He states that if the PW-1 had been at the place of incident on the information of PW-2, then definitely he would have been a witness of the panchayatnama. He further states that to hide this absence, PW-1 had throughout in his statements given in the court stated a falsity that he was there at the time when the panchayatnama was being conducted but no signature of his was taken. Coupled with this, definitely learned counsel for the appellants states that PW-1 though had stated that he had never assisted the I.O. in getting the site plan prepared, strangely enough, the I.O. had said that the PW-1 had got the site plan prepared. It appears that the I.O. was so confused as to who was actually the

informant that he had stated all this. He did not remember whether the informant was the pradhan or the uncle of the deceased children, the PW-1.

(iv) Learned counsel for the appellants has further stated that when Jitendra Bhushan had informed the police for the first time about the deaths, name of the PW-2 was not there in the application given, then the court should have presumed that the PW-2 was never there before the pradhan. However, to get a proper information as to who had actually informed Jitendra Bhushan, it was the duty of the prosecution to have produced Jitendra Bhushan specially when he was also a witness and also named in the police report submitted before the Court. Learned counsel for the appellants relying upon the judgment of Supreme Court in **(2015) 7 SCC 178: Tomaso Bruno And Another versus State of Uttar Pradesh** states that information which was the best evidence when was withheld then an adverse inference had to be drawn against the prosecution.

(v) He further submits that the findings recorded by Trial Court in impugned judgment and order are perverse. There are major contradictions on material points in prosecution evidence. None has seen appellants along with the deceased children. It is entirely a case of no evidence against accused-appellants. Thus, referring to entire evidence, it is further argued that present case does not come under the purview of 'rarest of rare case'. Trial Court has wrongly awarded death punishment to appellant Priyanka. Impugned judgment and order suffers from perversity, illegality and infirmity and requires interference by this Court.

15. Per contra, learned A.G.A. argued that since the three children were brutally killed, keeping in view the brutality caused to deceased, this case clearly comes under the purview of 'rarest of rare case'. The conduct, attitude and manner in which murder of three children has been committed by accused-appellant Priyanka shows that appellant is a menace to the Society and if she is not awarded with death penalty, even members of the Society

may not be safe. The entire incident is extremely revolting and shocks the collective conscience of the community. Murders were committed in gruesome, merciless and brutal manner. He further submits that PW-2 – child witness was present on the spot at the time of commission of the crime. He is an eye witness of the incident and his testimony is credible and consistent. Findings recorded by the Trial Court are not perverse. There is no illegality or infirmity in the impugned judgment and order.

16. We have considered rival submissions advanced by learned counsel for parties and have gone through entire record carefully.

17. First of all the Court proceeds to deal with submission raised on point of evidentiary value of a child witness.

18. Section 118 of the Indian Evidence Act, 1872 lays down the general rule regarding the competency of witnesses. It 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 reason of tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. Thus, under the statutory scheme, a child of tender age is not automatically disqualified from testifying in a court of law. Competency is a legal presumption, but credibility is a question of fact that must be established through rigorous judicial scrutiny.

19. The law regarding the competency and evaluation of a child witness was authoritatively expounded by the Constitution Bench of the Supreme Court in **Rameshwar v. State of Rajasthan AIR 1952 SC 54**. Examining Section 5 of the Oaths Act, 1873 and Section 118 of the Evidence Act, 1872, the Supreme Court emphasized that while competency is presumed in fact unless the court considers otherwise, it is highly desirable for trial judges to record their preliminary opinion on the child's understanding. In this case Supreme Court held that:

"Every witness is competent to depose unless the court considers that he is prevented from understanding the question put to him, or from giving rational answers by reason of tender age, extreme old age, disease whether of body or mind or any other cause of the same kind. There is always competency in fact unless the court considers otherwise... it is desirable that Judges and Magistrates should always record their opinion that the child understands the duty of speaking the truth and state why they think that, otherwise the

credibility of the witness may be seriously affected, so much so, that in some cases it may be necessary to reject the evidence altogether."

20. The critical necessity of recording preliminary questions and answers was further reiterated in the case of **Pradeep v. State of Haryana (2023) 19 SCC 221**, where the Supreme Court underscored:

"Before recording evidence of a minor, it is the duty of a Judicial Officer to ask preliminary questions to him with a view to ascertain whether the minor can understand the questions put to him and is in a position to give rational answers. The Judge must be satisfied that the minor is able to understand the questions and respond to them and understands the importance of speaking the truth. Therefore, the role of the Judge who records the evidence is very crucial. He has to make a proper preliminary examination of the minor by putting appropriate questions to ascertain whether the minor is capable of understanding the questions put to him and is able to give rational answers. It is advisable to record the preliminary questions and answers so that the appellate court can go into the correctness of the opinion of the trial court."Before recording evidence of a minor, it is the duty of a Judicial Officer to ask preliminary questions to him with a view to ascertain whether the minor can understand the questions put to him and is in a position to give rational answers. The Judge must be satisfied that the minor is able to understand the questions and respond to them and understands the importance of speaking the truth. Therefore, the role of the Judge who records the evidence is very crucial. He has to make a proper preliminary examination of the minor by putting appropriate questions to ascertain whether the minor is capable of understanding the questions put to him and is able to give rational answers. It is advisable to record the preliminary questions and answers so that the appellate court can go into the correctness of the opinion of the trial court."

21. While a child witness may possess the technical competency to depose under Section 118 of the Evidence Act, it is important to be

cautious as children are impressionable, imaginative, and highly vulnerable to external suggestions, coaching, and tutoring. A child of tender age can easily be swayed by surviving relatives, police officers, or village elders into believing or reciting a specific narrative. Consequently, the testimony of a child witness must be approached with extraordinary circumspection and care.

22. In *Mangoo v. State of M.P.* AIR 1995 SC 959, the Supreme Court highlighted the duty of the court to carefully inspect the evidence for traces of tutoring:

"There was always scope to tutor the child, however, it cannot alone be a ground to come to the conclusion that the child witness must have been tutored. The court must determine as to whether the child has been tutored or not. It can be ascertained by examining the evidence and from the contents thereof as to whether there are any traces of tutoring."

23. Similarly, in *Panchhi v. State of U.P.* (1998) 7 SCC 177, a Bench of the Supreme Court observed that the rule requiring corroboration of a child's testimony is a rule of practical wisdom:

"The evidence of a child witness must find adequate corroboration before it is relied on. However, it is more a rule of practical wisdom than of law. It cannot be held that the evidence of a child witness would always stand irretrievably stigmatised. It is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus a child witness is an easy prey to tutoring."

24. The principles governing child witnesses were synthesized in the case of *State of M.P. v. Ramesh* (2011) 4 SCC 786, where the Supreme Court summarized the position of law as under:

"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."

25. Applying the principles articulated in the aforementioned judicial precedents to the facts of the instant case, this Court finds that the sole testimony of the 8 year-old child witness suffers from irreconcilable contradictions and exhibits clear hallmarks of tutoring, rendering it wholly unsafe to form the sole basis of conviction. In this case PW-2 – child witness had stated that after the incident, he had asked for help from a person who was grazing goats and the said person directed him to a particular lane where he met Pradhan Jitendra Bhushan, who took him to his house and there the child had told him about the entire incident. Thereafter, the Pradhan had rung up the police and after sometime police had come to the house of the Pradhan and had taken PW-2 to Thana. He had also stated that Manish, the first informant, was his uncle and he had told him about the incident and he had got the F.I.R. lodged whereas PW-1 Manish states that information with regard to the death of the three children was given to the police by the Pradhan of Keshampur and he had also received the information in this regard from there itself and not from the child. He further stated that he did not know the name of the person who had informed him about the incident. PW-2 though states that after sometime of receiving the information about the occurrence, police had come to the house of the Pradhan and had taken PW-2 (child witness) to Thana but it is evident from the factual matrix that his statement was not recorded on the said date rather it was recorded on 5.7.2024, which creates significant doubt about his presence at the scene of crime on the date and time in question. The internal contents of the child's deposition unequivocally demonstrate that the child was an easy prey to tutoring and was swayed by the influence of adult relatives i.e. his *bua* and *fufa*. The narrative provided by the child appears artificially structured and lacks the natural spontaneity expected from an 8-year-old child who allegedly witnessed a tragic traumatic incident involving his own mother and siblings. It is settled law that where the core of a child witness's deposition is infected by tutoring and contradictions, the entirety of such oral evidence must be rejected as unconvincing.

26. We must also test the prosecution narrative on the touchstone of natural human conduct and probabilities under Section 114 of the Evidence Act. The

prosecution propounds that the appellant-mother executed a cold-blooded killing of her three children aged 4,5 and 6 years, yet spared the 8-year-old child, leaving him unharmed to act as an eyewitness against her. This hypothesis is inherently improbable and unnatural. If an accused mother had indeed succumbed to criminal intent to eliminate her offspring, it defies basic logic and human behaviour that she would spare the eldest child who was fully capable of speaking, observing, and implicating her.

27. So far as the deposition and conduct of PW-1/ informant is concerned, he states that his elder brother Avnish had died around two years prior to the date of incident and that he had left behind him, his four children, namely, Sonu, Aditya, Madhav and Mangal. He further stated that his sister-in-law and his cousin brother Ashish were having an illicit relationship and they wanted to get rid of the four children, who were hurdle in their path. He had stated that the incident had occurred at 05:00 AM and Ashish and Priyanka in a planned manner had tried to drown the four children, however Sonu, the eldest of the four, escaped while the other three died. He further stated that Sonu, who was alive, had come and informed him (PW-1) about the entire incident whereas at initial stage he stated that information with regard to the death of the three children was given to the police by the Pradhan of Keshampur and he had also received the information in this regard from there itself. He further stated that he did not know the name of the person who had informed him about the incident. Interestingly, at one place he states that Priyanka's aunt had informed him about the incident which marks significant shifts in his stand. Further, PW-1 states that site plan was not prepared by the I.O. on his pointing out whereas the I.O. states that he had prepared the site plan on the pointing out of PW-1/informant. Moreover, he has stated that he had reached the place of incident at around 09:00 AM. The police was already there and the police had told him again about the incident but still the FIR was lodged by him at 6.44 p.m. Furthermore, though he has stated that the panchayatnamas were also drawn in his presence but he is not the witness of any of the panchayatnamas. Thus, it is apparent that his conduct is unnatural and he is not a reliable witness.

28. As regards the submission of the learned Senior Advocate appearing for the appellant placing reliance upon the judgment of the Hon'ble Supreme Court in **Tomaso Bruno v. State of U.P., (2015) 7 SCC 178** that the Pradhan Jitendra Bhushan, who was a material witness, was not examined in this case and if the best evidence is withheld then an adverse inference is to be drawn against the prosecution, is concerned, in this matter it is evident that the child who escaped had firstly informed the Pradhan Jitendra Bhushan about the incident and after that he (Pradhan) rung to the police and gave an application and after sometime police reached the place of incident

and on his application panchayatnamas and post mortem of the dead bodies of the deceased were conducted and the police had also taken his statement under Section 161 CrPC but he, though being a material witness, was not examined before the Court. Though it is settled law that it is quality of evidence which is required to be taken note of by Courts and not the quantity but this doctrine cannot be invoked to bypass or diminish the best evidence rule. The law demands a party to produce the most direct and highest degree of evidence available within its possession to prove a contested fact and if a material witness who could unfold the true genesis of the incident is deliberately or negligently withheld, the court is entitled to draw an adverse inference against the prosecution. The Apex Court in **Takhaji Hiraji v. Thakore Kubersing Chamansing, (2001) 6 SCC 145** has held as under :

"It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself — whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court."

29. Applying these principles to the case at hand, the Pradhan of the village concerned was an important witness in this case as it was on his application the law came into motion in a case where the prosecution relies exclusively on a single 8-year-old child witness whose evidence is riddled with contradictions and tutoring. The examination of the Pradhan was absolutely

vital to supply the genesis of the incident and to corroborate how the crime was first disclosed. This omission leaves an unbridgeable gap in the prosecution case. Under these circumstances, the Court is bound to draw an adverse inference against the prosecution. We must infer that had the Pradhan been produced and subjected to cross-examination, his testimony would not have supported the prosecution narrative, or would have exposed the true genesis of the incident, which might have been entirely different from the version put forward by the police.

30. So far as the submission regarding faulty investigation is concerned, while it is an accepted proposition that every minor investigative lapse does not enure to the benefit of the accused, the glaring defects in the investigation cannot be brushed aside as mere administrative irregularities. In the present matter, the lapses committed by the Investigating Officer are of such a fundamental and pervasive nature that they strike at the very root of the prosecution's case. The deliberate failure to record the statement of PW-2 on the day of incident itself, even when as per the version of the Pradhan when the police came they took PW-2 to the police station on the day of incident itself, conflicting statement as to on whose pointing out the site plan was prepared, non-lodging of FIR on the application moved by the Pradhan, though a cognizable offence was disclosed and GD entry was also made pursuant to the said application, etc. shakes the root of the prosecution case and creates doubt about its credibility.

31. Hence, upon careful analysis and consideration of the settled legal position in the backdrop of the facts and circumstances of the present case, this Court reaches the firm conclusion that the prosecution has miserably failed to establish the guilt of both the accused-appellants, namely, Priyanka and Ashish @ Daini beyond all reasonable doubt. The conviction recorded by the learned trial court rests on statement of an uncorroborated, tutored, and contradictory child witness, coupled with a fatal failure to produce the best available evidence, unreliable deposition of PW-1 and investigative lapses. Therefore, the Court is inclined to grant benefit of doubt to the accused appellants on the ground of rule of caution.

32. Accordingly, Criminal (Capital) Appeal filed on behalf of accused-appellant Priyanka and Jail Appeal filed on behalf of accused-appellant Ashish @ Daini are **allowed** and Reference submitted by the Trial Court is hereby answered accordingly for the reasons discussed here-in-above. Impugned judgment and order dated 05/10.07.2025 passed by the Additional District and Sessions Judge, Room No.3, Auraiya, convicting and sentencing accused-appellants as above, is hereby set-aside. The appellants are not found guilty for the charges framed against them. They are honorably

acquitted of the charges. They should be released forthwith, if not wanted in any other case.

33. Copy of this judgment along with lower court record be sent forthwith to the Court concerned for compliance.

34. Shri Saghir Ahmad, learned senior counsel, who argued on our request as an Amicus Curiae, is held entitled to his professional fees of Rs. 50,000/- which shall be paid to him within two weeks of raising of bill by him.

September 22, 2026
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(Jai Krishna Upadhyay,J.) (Siddhartha Varma,J.)