A VIRENDRA @ BUDDHU & ANR.

v.

STATE OF U.P.

(Criminal Appeal No. 509 of 2006)

OCTOBER 17, 2008

B

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM SHARMA, JJ.]

Penal Code, 1860; s.302 r/w s.34 and s.307:

C *Assault and murder – Doubting testimony of wife and daughter of deceased, eye witnesses, trial Court acquitted all the accused persons – Reversed by High Court as against the appellants relying upon evidence of PW1 and PW2, but affirming acquittal of accused No.3 – Correctness of – Held:* D *High Court rightly observed that PW2 was a rustic girl of tender age likely to be overawed by Court atmosphere and out of nervousness she might have got confused and, therefore, could not answer some questions in cross-examination – Her evidence could not be rejected if otherwise found reliable and* E *trustworthy – Since testimony of PW1 corroborated with the testimony of PW2, her evidence could be accepted – PW1 and PW2 are natural witnesses and their presence with the deceased at the place of occurrence could not have been doubted – No reason found to discredit their evidence – Ocu-* F *lar testimony as to the date and time of the murder of the deceased mentioned in F.I.R. stands corroborated with medical evidenceOcular testimony as to the date and time of the murder of the deceased mentioned in F.I.R. stands corroborated with medical evidence – Hence, guilt of accused established –* G *No reason found to interfere with the impugned judgment – Indian Evidence Act, 1872 – S.118 – Competency of child witness – Eye witnesses/Natural witnesses – Testimony of.*

According to the prosecution, on the fateful day, the complainant, PW1 along with her husband, the deceased,

H

and daughter PW2, went for holy dip into river Ganges on the occasion of 'Poornamashi'. While they were returning through their field, accused persons, three in number, caught hold of the deceased and shot at him with country made pistols and ran away. The deceased fell down and succumbed to the injuries on the spot. The wife of the deceased lodged an F.I.R. After completion of the investigation, Police submitted a charge-sheet against the accused persons for committing the murder of the deceased. Trial Court acquitted all the accused persons of all the charges levelled against them. High Court, on re-appreciation of the evidence, found that the grounds of acquittal as given by the trial Court were unjustified as against the present appellants. It, however, maintained the order of acquittal passed in favour of accused No.3. Hence the present appeal.

On behalf of the appellants, it was contended that the discrepancies between the ocular evidence and the medical evidence are so vital that no Court could convict the accused persons and they were required to be treated similarly as the third accused who was acquitted of all the charges; that the post-mortem examination report of the deceased clearly proves and establishes that there was semi digested food in the stomach of the deceased at the time when autopsy was conducted, which clearly belies the prosecution case that the deceased died in the morning inasmuch as PW-1, wife of the deceased, had herself stated that the deceased did not take any food in the morning on the fateful day and he had taken his meal at about 6-7 p.m. on the previous day; that presence of semi-digested food in the stomach of the deceased at the time when autopsy was done, clearly pinpoints to the fact that the deceased was murdered at about 10.00 p.m. on 04.10.1979 by some unknown person and in order to make out a got up story it is now shown that the deceased was murdered in the morning on 5.10.79 in presence of his

A wife and daughter while returning after taking bath on the occasion of Poornamashi in river Ganges; and that there was discrepancy in the statement made by PW-1 and PW-2 as to the place of occurrence.

Dismissing the appeal, the Court

B

HELD: 1.1 The Indian Evidence Act, 1872 does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that all per-
C sons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions. [Para – 8] [717-A-B]

1.2 A child of tender age can be allowed to testify if
D he or she has intellectual capacity to understand questions and give rational answers thereto. The evidence of a child witness is not required to be rejected per se, but the court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about
E the quality thereof and reliability can record conviction, based thereon. [Para – 8] [717-C]

Dattu Ramrao Sakhare v. State of Maharashtra (1997) 5 SCC 341 and *Ratansinh Dalsukhbhai Nayak v. State of Gujarat* (2004) 1 SCC 64 – relied on.

F

1.3 In the present case, a perusal of the statement of PW 2 goes to show that she had no idea of directions, distance, area etc. She remained silent to some questions put to her such as what was the area of her father's field
G or whose fields were situate around the field of her father. The High Court observed that it is not expected from a girl of 14 years to answer these questions put to her. Besides it, a rustic girl of tender age of 14 years is likely to be overawed by the Court atmosphere and the piercing
H cross-examination made by the defense counsel and out

of nervousness she might have got confused and might not be able to answer some questions. PW2 could not tell the actual name of one of the accused persons saying that it was slipping from her mind. The Trial Court while disbelieving her testimony stated that she could not tell the real name of one of the accused person. The High Court held that on that ground that PW-2 could not answer few questions, her evidence could not be rejected if otherwise it was reliable and trustworthy. On perusal of the evidence, the testimony of PW-1 stands corroborated by the testimony of PW 2 on all material points. This Court is of the considered opinion that the prompt answers from her, to the questions put to her during cross-examination, can be accepted even though she was aged about 14 years when the occurrence had taken place. Even otherwise it is not the case of the prosecution that the conviction has to be based on the sole testimony of PW 2. [Para – 9] [718-E-H; 719-A-B]

1.4 In the FIR itself there was a reference to the fact that PW 2 was also an eye witness to the incident in addition to PW 1, as PW 2 was also accompanying the deceased and PW 1 on the fateful day. The testimony of PW 2 is used by the prosecution only to the extent that the same corroborates the evidence led by the prosecution through PW 1 and was also in conformity with the medical evidence. [Para – 9] [719-B-C]

2. In the instant case rigor mortis was present in lower extremities at the time autopsy was conducted on the dead body after 30 hours. As according to ocular testimony deceased was murdered on 05.10.1979 at about 10.00 a.m. and the doctor conducted autopsy on the dead body on the next day at about 4.30 p.m. after 30 hours of death but rigor mortis was found present in lower extremities. Had he died on 04.10.1979 at about 10.00 p.m. or so rigor mortis would have passed off from the dead body completely at the time of autopsy. Thus the ocular testi-

A mony that he was murdered on 05.10.1979 at about 10.00 a.m. stands corroborated from the medical evidence pinpointing that rigor mortis was present in lower extremities at the time when the autopsy was conducted on the dead body after 30 hours. [Para – 10] [720-B-F]

B *Medical Jurisprudence and Toxicology*, 1977 Edition, page 125 by Modi – referred to.

3. No reason is found to discredit the evidence of the two eye witnesses, whose presence could not have C been doubted at the place of occurrence of death of the deceased on the sole ground that PW 1 in her cross examination has mentioned that her husband had not taken food after the previous evening. They were natural witnesses who were present at the time of occurrence and D the possibility that the deceased might have taken something after taking bath in the morning which PW1 might not have noticed. Such a situation as held by the High Court cannot be ruled out. [Para – 11] [720-F-H]

Sarbul Singh and Others v. State of Punjab (1993) Supp E 3 SCC 678 – relied on.

4. Reliance was placed by the senior counsel for the appellants to the fact that there was discrepancy between the evidence of PW-1 and PW-2 to the extent that PW-1 has stated that near the place of occurrence in the field F there was bajra and jwar crop standing whereas PW- 2 has stated that at that time there was no crop in the field except pataur standing. The said discrepancy is of no significance at all. [Para – 12] [721-F-G]

G CASE LAW REFERENCE

(1997) 5 SCC 341	Relied on	Para - 8
(2004) 1 SCC 64	Relied on	Para - 8
(1993) Supp 3 SCC 678	Relied on	Para - 11

H

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 509 of 2006

From the final Judgment and Order dated 13.1.2006 of the High Court of Judicature at Allahabad in Government Appeal No. 1263 of 1982

Salman Khbursbid, Imtiaz Ahmad and Naghma Imtiaz (for M/s. Lex Associates) for the Appellant.

S.N. Pandey and C.P. Pandey for the Respondent.

The Judgment of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. This appeal is filed by the two accused who have been convicted by the Division Bench of the Allahabad High Court under Section 302 read with Section 34 of the Indian Penal Code (for short 'IPC') and sentenced to undergo imprisonment for life.

2. Originally, there were three accused persons, namely, Virendra @ Buddhu, Ram Asrey @ Tamli and Girish Chandra @ Gappu and they were charged under Section 302 read with Section 34 IPC and Girish Chandra was also charged under Section 307 IPC. The Trial Court after recording evidence and hearing arguments acquitted all the accused persons of the charges leveled against them under Section 302 read with Section 34 IPC and Girish Chandra from the charges leveled against him under Section 307 IPC. Being aggrieved by the order of acquittal passed by the Trial Court an appeal was filed by the State of U.P. before the Allahabad High Court. The said appeal was allowed in part to the extent that acquittal of the accused – appellant in the present appeal was set aside and they were sentenced to undergo imprisonment for life under Section 302 read with Section 34 IPC, while the acquittal of third accused, namely, Girish Chandra was affirmed by the same judgment and order of the High Court of Allahabad. Being aggrieved by the said order of the High Court the present appeal was filed by the accused persons, in which notice was issued and an order was also passed rejecting the prayer for bail but with direction

for expeditious disposal of the appeal. Pursuant to the said order, the present appeal was listed before us for hearing and disposal and we heard the learned counsel appearing for the parties. In this appeal, learned counsel appearing for the parties have taken us through the entire evidence on record in support of their contentions before us.

3. Before analyzing the submissions made before us by the counsel appearing for the parties, it will be necessary to set out the factual position leading to the filing of the present appeal by both these accused persons.

On 05.10.1979 at about 4.45 p.m. Smt. Sarla Devi, wife of Rameshwar Dayal (hereinafter referred to as 'deceased') lodged a First Information Report at police station Shamshabad, District Farrukhabad alleging that Pyarey Lal who happened to be her grand father in relation had executed a sale deed of his landed property in favour of her son Pradeep Kumar but subsequently Het Ram and Sahdev got a deed of will regarding the same property allegedly executed by their maternal uncle Pyarey Lal in their favour. Therefore, in respect of the same piece of land, litigation was going on between her deceased husband on one hand and Het Ram and Sahdev on the other hand. Three months prior to the occurrence Sahdev was murdered and in connection with the said murder her son Pradeep Kumar, brothers Jaidev and Rakesh were falsely roped in as accused and Pradeep was still in jail at the time of murder of his deceased father. It was also alleged that proceedings under Section 107 and 117 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C) were also going on between the deceased on one hand and Het Ram on the other hand. It was further alleged that Het Ram and his son Virendra @ Buddhu were nursing grudge against the deceased. On the fateful day i.e. on 05.10.1979, early morning the deceased, the complainant Sarla Devi, P.W. 1 and their daughter Km. Guddi, P.W. 2 had gone for taking a holy dip into the river Ganges on the pious occasion of "Poornamashi". Thereafter, at about 10.00 a.m. while they were returning back after seeing Patavar in their field through the field

of Raghubar Dayal and reached near mango tree standing in that field, Virendra alias Buddhu along with his cousins Ram Asrey alias Tami and Girish Chandra alias Gappu armed with country made pistols emerged from Patavar standing at the medh of Chhavinath and rushed towards the deceased. Ram Asrey was shouting that the deceased should be caught hold of as they had to take revenge of the murder of their maternal uncle. Upon hearing the said shouting the deceased tried to run for his life but he could not escape and Virendra and Girish caught hold of him under the mango tree and Virendra and Ram Asrey fired at him with country made pistols causing fatal injuries on him. On hue and cry raised by Smt. Sarla Devi and Guddi, Girish fired commanding them not to come forward and all the three accused ran away towards left. Sustaining fatal injuries at his head and eye the deceased died on the spot instantaneously.

Thereafter on reaching of some of the co-villagers near the dead body Sarla Devi went to the village and got the report scribed by Deep Chand and then went to the police station Shamshabad situated at a distance of about 7 miles from the village. She lodged the First Information Report, upon which a criminal case was registered and investigations of the crime was taken up.

During the course of investigation all the three accused persons were arrested. Autopsy was conducted on the dead body and post-mortem report was obtained. After completion of the investigation, the police submitted charge sheet against the three accused persons. The trial court framed charges against all the three accused persons under Section 302 read with Section 34 IPC and against accused Girish also under Section 307 IPC. The charges were read over to the accused and were explained to them in Hindi language. They pleaded not guilty and expressed their desire to be tried. Since the learned counsel for the accused admitted under Section 294 of the Cr.P.C. the prosecution records from Ext. Ka-2 to Ext. Ka-18, the prosecution examined no other person as prosecution witness other than Smt. Sarla Devi the complainant as PW-1

A and Km. Guddi as PW-2, who are stated to be eye-witnesses of the said occurrence. The learned trial court thereafter critically examined the depositions and the evidence on record and on appreciation thereof acquitted all the three accused persons of all the charges leveled against them.

B On appeal being filed, the High Court on re-appreciation of the evidence and records found that the grounds of acquittal as given by the learned trial court were unjustified and for the reasons recorded in the judgment set aside the order of acquittal passed against Virendra and Ram Asrey. The High Court, C however, maintained the order of acquittal passed in favour of Girish Chandra. Consequently, the present appeal is filed by the two accused persons who were held to be guilty of the charge under Section 302 read with Section 34 IPC.

D 4. Mr. Salman Khurshid, the learned senior counsel appearing for the appellants submitted that the High Court was not justified in setting aside the order of acquittal inasmuch as the reasons given by the High Court for reversing the order of acquittal are unsustainable. He submitted that the discrepancies between the ocular evidence and the medical evidence E are so vital that no Court could convict the two accused persons and they were required to be treated similarly as the third accused, namely, Girish Chandra who was acquitted of all the charges. Relying on the post-mortem examination report of the deceased, he submitted that the said report clearly proves and F establishes that there was 4 oz of semi digested food in the stomach of the deceased at the time when autopsy was conducted, which clearly belies the prosecution case that the deceased died at about 10.00 a.m. in the morning inasmuch as PW-1 – Smt. Sarla Devi, wife of the deceased, had herself G stated that the deceased did not take any food in the morning on the fateful day and he had taken his meal at about 6-7 p.m. on 04.10.1979. He further submitted that presence of 4 oz of semi-digested food in the stomach of the deceased at the time when autopsy was done, clearly pinpoints to the fact that the H deceased was murdered at about 10.00 p.m. on 04.10.1979

by some unknown person and in order to make out a got up story it is now shown that the deceased was murdered in the morning in presence of his wife and daughter while returning after taking bath on the occasion of Poornamashi in river Ganges. He also pointed our attention to the discrepancy in the statement made by PW-1 – Smt. Sarla Devi and PW-2 Km. Guddi for PW-1 has stated that near the place of occurrence in the field there was bajra and jawar crop standing whereas PW-2 Km. Guddi has stated that at that time there was no crop in her field except pataur standing. According to the senior counsel, the said discrepancy is very vital and clearly belies the prosecution case and therefore both the accused persons should be acquitted of all the charges.

5. Learned counsel for the State on the other hand while supporting the judgment of the high court stated that the findings recorded by the Trial Court were clearly erroneous in law and the High Court has rightly appreciated the evidence on record while coming to its conclusion.

6. In order to appreciate the contentions raised, we have read the entire evidence on record. The two witnesses, PW-1 and PW-2, are the eye-witnesses. The incident had taken place in their presence when they were coming back after taking a holy dip in the river Ganges. PW-1 had also stated in her deposition about the motive for the murder of the deceased as according to her there was a long animosity between the deceased and the accused persons. About the incident she has stated that on the day of Poornamashi at about 10.00 a.m. when she along with her deceased husband and daughter Km. Guddi was returning after having a holy-dip in the river Ganges, the deceased expressed his desire that they should have a look of their crop and then go home and when these persons reached near the field of Chhabinath, the accused persons emerged from behind the crops. She had also stated that all the three persons were armed with country made pistols and at that time Ram Asrey exhorted others to catch hold of the deceased in order to take revenge of murder of their maternal uncle. She also stated

A that thereupon Ram Asrey, Virendra and Girish Chandra caught hold of the deceased. She further stated that first of all Ram Asrey caught hold of the deceased and then Virendra caught hold of him and then Ram Asrey and Girish Chandra fired shots with their country made pistols which hit at the skull of the de-
B ceased upon which deceased fell down on the field and died on the spot. The accused persons fled away from there towards west direction to the village.

She also stated that after the co-villagers arrived at the place of occurrence she went home and met the brother-in-law
C of her deceased husband, namely, Deep Chandra and got the Report of the occurrence written by him. She thereafter accompanied by her son-in-law Prem Chand went to the police station Shamshabad where she submitted the said written report Ext. Ka-1 and lodged the First Information Report Ext. Ka-2 at about
D 4.30 p.m. She had of course stated in her statement that her deceased husband took his last meal at about 6.00 – 7.00 p.m. on the previous evening and did not take anything in the morning.

7. The prosecution also examined Km. Guddi, PW-2
E daughter of deceased. The Trial Court, of course disbelieved the evidence of PW-2, namely, Km. Guddi, who stated her age to be about 14 or 15 years on the date of incident. According to the Trial Court, she was not a dependable and reliable witness as she does not understand the meaning of the expression "oath"
F and also as she has no idea about the direction and boundaries of her field. The High Court in the appeal however considered her deposition and held that the Trial Court was not justified in rejecting her testimony totally. The Trial Court did not administer oath to her observing that she appeared to be aged
G about 12 years and also opined that she did not understand sanctity of oath. The High Court held that PW-2 might not be in a position to understand the significance of Shapath (oath) but the Trial Court should have satisfied himself if she understood the significance of desirability of speaking the truth.

H

8. The Indian Evidence Act, 1872 does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease, whether of mind, or any other cause of the same kind. A child of tender age can be allowed to testify if he or she has intellectual capacity to understand questions and give rational answers thereto. The evidence of a child witness is not required to be rejected per se, but the court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon. In *Dattu Ramrao Sakhare v. State of Maharashtra* [(1997) 5 SCC 341] it was held as follows: (SCC p. 343, para 5)

> "A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored."

Subsequently, in the case of *Ratansinh Dalsukhbhai Nayak v. State of Gujarat,* [(2004) 1 SCC 64] wherein one of us (Dr. Arijit Pasayat) was a member the bench held that though the decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who no-

A tices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath but the decision of the trial court may, however, be disturbed by the higher court if B from what is preserved in the records, it is clear that his conclusion was erroneous. The bench further held as under: (SCC p. 67, para 7).

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

9. In the present case, a perusal of the statement of PW 2 goes to show that she had no idea of directions, distance, area etc. She remained silent to some questions put to her such as E what was the area of her father's field or whose fields were situate around the field of her father. The High Court observed that it is not expected from a girl of 14 years to answer these questions put to her. Besides it, a rustic girl of tender age of 14 years is likely to be overawed by the Court atmosphere and the F piercing cross-examination made by the defense counsel and out of nervousness she may get confused and may not be able to answer some questions. PW2 could not tell the actual name of Buddu saying that it was slipping from her mind. The Trial Court while disbelieving her testimony stated that she could not G tell the real name of Buddhu. The High Court held that on that ground that PW-2 could not answer few questions, her evidence could not be rejected if otherwise it was reliable and trustworthy. We have been taken through her evidence by the learned counsel and on perusal of the same we find that the testimony H of PW-1 Sarla Devi stands corroborated by the testimony of

PW 2 Guddi on all material points. We are of the considered opinion that the prompt answers from her, to the questions put to her during cross-examination, can be accepted even though she was aged about 14 years when the occurrence had taken place.

Even otherwise it is not the case of the prosecution that the conviction has to be based on the sole testimony of PW 2. In the FIR itself there was a reference to the fact that PW 2 was also an eye witness to the incident in addition to PW 1, as PW 2 was also accompanying the deceased and PW 1 on the fateful day. The testimony of PW 2 is used by the prosecution only to the extent that the same corroborates the evidence led by the prosecution through PW 1 and was also in conformity with the medical evidence. It appears to us from a reading of her deposition that she had deposed whatever she had seen and the same corroborates the testimony of PW 1 on all material points. She was a rustic village girl aged about 14 years and such a girl cannot always be expected to have an alert mind so as to be able to answer all questions such as directions, area, and distance with precision.

10. This brings us to the main contention of the counsel appearing for the appellants regarding the presence of 4 oz of semi-digested food in the stomach of the deceased. Similar contention was also raised before the High Court and the High Court in its judgment had mentioned that the Trial Court observed that the deceased was murdered on 04.10.1979 at about 10.00 p.m. because the doctor who conducted autopsy on the dead body of the deceased mentioned in the post mortem report that stomach contained 4 oz of semi-digested food and PW 1 Sarla Devi stated in her cross-examination that her husband had not taken food after last evening. Answering the said contention the High Court observed that such observation made by the Trial Court is wholly erroneous as both the eye-witnesses stated that the deceased was murdered while returning to the village after taking bath in the river Ganges as there was Poornamashi that day. Regarding the statement of PW 1 Sarla Devi to the fact

A that deceased had not taken anything on that fateful day since morning, it was held by the High Court that the possibility cannot be ruled out that the deceased might have taken something after taking bath in the morning and that Sarla Devi might not have noticed the same.

B Moreover, the doctor who conducted autopsy on the dead body on 06.10.1979 at 4.30 p.m., in the report has mentioned that rigor mortis had passed through upper extremities and was present in lower extremities. It is mentioned at page 125 of Modi's Medical Jurisprudence and Toxicology, Edition 1977 that C in general rigor mortis sets in 1 to 2 hours after death, is well developed from head to foot in about 12 hours, is maintained for about 12 hours and passes off in about 12 hours. In the instant case rigor mortis was present in lower extremities at the time autopsy was conducted on the dead body after 30 hours. D As according to ocular testimony deceased was murdered on 05.10.1979 at about 10.00 a.m. and the doctor conducted autopsy on the dead body on the next day at about 4.30 p.m. after 30 hours of death but rigor mortis was found present in lower extremities. Had he died on 04.10.1979 at about 10.00 p.m. or E so rigor mortis would have passed off from the dead body completely at the time of autopsy. Thus the ocular testimony that he was murdered on 05.10.1979 at about 10.00 a.m. stands corroborated from the medical evidence pin-pointing that rigor mortis was present in lower extremities at the time when the au- F topsy was conducted on the dead body after 30 hours.

11. We find no reason to discredit the evidence of the two eye witnesses, whose presence could not have been doubted at the place of occurrence of death of the deceased on the sole ground that PW 1 in her cross examination has mentioned that G her husband had not taken food after the previous evening. They were natural witnesses who were present at the time of occurrence and the possibility that the deceased might have taken something after taking bath in the morning which Sarla Devi might not have noticed. Such a situation as held by the High H Court cannot be ruled out. In a similar case of *Sarbul Singh*

and Others v. State of Punjab, [1993 Supp (3) SCC 678], where some semi-digested food was found in the stomach of the deceased therein although there was evidence that they had taken food immediately before the occurrence, this Court held as under:

> "**6.** We see absolutely no reason to discredit the evidence of the three eyewitnesses whose presence cannot be doubted. Now coming to the semi-digested food, it cannot be ruled out that the old lady might not have eaten anything earlier. Merely because the illiterate witnesses stated that they took their meals immediately before the occurrence cannot by itself be a circumstance to discredit their evidence on the basis of medical evidence regarding the presence of semi-digested food. It is also clear from the textbooks on medical jurisprudence that the stomach contents cannot be determined with precision at the time of death. As rightly held by the High Court, the trial court grossly erred in basing its verdict mainly on the nebulous medical observation."

12. In this view of the matter, we are unable to accept the contentions of the learned senior counsel appearing for the appellants that the appellants should be acquitted for the reasons stated hereinabove. We reject the contentions because of the reasons set out hereinabove. Reliance was also placed by the learned senior counsel for the appellants to the fact that there was discrepancy between the evidence of PW-1 – Smt. Sarla Devi and PW-2 Km. Guddi to the extent that PW-1 has stated that near the place of occurrence in the field there was bajra and jwar crop standing whereas PW-2 Km. Guddi has stated that at that time there was no crop in the field except pataur standing. The said discrepancy is of no significance at all. Both the witnesses were found to be natural eye-witnesses, who were present at the place of occurrence on the fateful day, they were wife and daughter of the deceased and they would rope in only the culprits to be punished and will not rope in someone who is not at all involved in the incident. The medical evi-

A dence available on record fully corroborates the ocular evidence and proves and establishes the guilt of the accused persons. There could be no doubt in the prosecution case regarding the manner in which the incident happened. The case of prosecution by recovery of blood, pellets, tiklis and empty cartridge from
B the place of occurrence stands proved and therefore there could be no doubt with regard to the time and place of occurrence and also regarding the weapons used in the assault. We, therefore, find no reason to take a different view than what was taken by the High Court.

C 13. The appeal is devoid of merit and is dismissed.

S.K.S. Appeal dismissed.