

## CHILD WITNESS

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S. 302(b)/34---Appraisal of evidence---Sentence, reduction in---Ocular testimony of the two child witnesses, aged 12 years and 10 years, as to the events and occurrence having taken place in the house before their eyes, had inspired confidence---Trial Court had taken all possible and due steps to judge the level of intelligence and maturity of the child witnesses before recording their statements, who had given consistent account of occurrence and participation of their mother and her paramour in killing their father and they had no reason whatsoever for falsely implicating their mother---Ocular evidence had derived strength and corroboration from other evidence including the post-mortem report---Cause of death of the deceased had tallied with the statements of the eye-witnesses---Some minor discrepancies or even contradictions having no material bearing, did not vitiate the findings recorded by the two Courts on proper application of evidence---**Conviction of accused was consequently upheld**---As a result of the said episode five children, eldest being 12 years old, had lost their father, whereas their mother had been sentenced to death and they had become orphans, and in such a situation death sentence of their mother really deserved consideration---In a case of Qisas Court had no discretion in the matter of sentence, whereas in a case of Tazir Court might award either of the sentence provided under S.302(b), P.P.C. and exercise the discretion depending upon the facts and circumstances of the case---Keeping in view the welfare of the five minor bereaved children, death sentence of their mother (female accused) was converted into imprisonment for life with benefit of S.382-B, Cr.P.C.---However, death sentence awarded to male accused was affirmed in circumstances. 2009 SCMR 1428 SUPREME-COURT) Mst. RAZIA alias JIA vs State

Child witness. Judges to record questions put to child witness and answers while giving their opinion about his or her competence. 1979 SCMR 186 Umar Jehan.

Child witness. No set of question are prescribed by section 118, Evidence Act. Magistrate satisfied by putting certain questions to the witness. No reason to go behind Magistrate's opinion. (SC) 1976 SCMR 338 Ameer Umar.

Testing a child witness. (Section 118, Evidence Act). No provision of law requires the Judge to record questions and answers put to child witness to test if he is intelligent enough to understand what he deposes about Legally the appellate Court should accept the note of the trial Court as sufficient proof of the capacity of the child to be witness under section 118, Evidence Act. There is no statutory provision requiring a Judge to fix an age till which the questioning of the child witness to test its intelligence should be resorted to. (DB) PLD 1956 Lah. 840. Khalil.

Potentially unreliable evidence include that of children more particularly in sexual cases and an accomplice who would blame the co-accused to escape punishment. 1994 SCMR 137 (P.C.) Junior Reid.

Child witness: Trial Judge satisfied as to her capacity of understanding questions. Witness giving evidence, without hesitation in straight forward manner. Witness held to be competent and relied on (DB) PLD 1974 Pesh. 113 Bashir.

Child witness giving intelligent answers to cross-examination by defence, leaves no room for idea that the child is a tutored witness. Testimony of such child witness is intrinsically true and worth credit. (DB) PLJ 1974 Cr.C. (Lah.) 582 Bashir.

Child witnesses if intelligent enough do not ordinarily tell lies and their evidence carries higher value than ordinary witnesses for the reason that they are generally considered to be innocent and obvious of motive and evil considerations. (DB) PLJ 1998 Cr.C. (Kar.) 468, Ghulam Hussain, etc.

Testimony of child witness 6 years old relied upon when it inspired confidence which was supported by medical evidence and last seen evidence. 1997 SCMR 1595, Muhammad Jamal.

Competency of child witness depends on degree of intelligence and the capacity to understand and answer question. No oath given to the child witness does not make his evidence inadmissible. PLD 1979 Kar. 147 Bashir Ahmad.

Non-production of minor persons in witness-box cannot adversely affect the prosecution case. (SC) 1970 SCMR 603 Gulzar.

Evidence of child witness (Qanun-e-Shahadat Order Art. 3) Evidence of child witness possessing sufficient understanding can be believed and relied upon for conviction. 1995 SCMR 1615, Muhammad Ismail etc. = PLJ 1996 SC. 805.

Child witness not reliable. Child witness capable of being tutored and making lot of improvements in statements, held, not safe to accept the evidence of such a witness. (DB) PLD 1960 Dacca 396 Sona Mia.

Evidence of a child witness is a delicate matter and normally it is not safe to rely upon it unless corroborated. It is a rule of prudence. Great care is to be taken that in the evidence of child element of coaching is not involved. As a rule the evidence of a child witness is not to be relied upon unless corroborated. PLD 1995 S.C. 1, State v. Farman Hussain Shah etc.

Child witness. Conviction cannot be based on the sole testimony of a child witness. (DB) PLD 1965 Kar. 615 Sultan etc.

Child witness 3« years old not relied upon, as he remained with his uncle for 10 days after the incident when his statement was recorded by the I.O. As there was no corroboration of the statement appeal was allowed. (D.B) PLJ 1995 Cr.C. (Lah.) 206, Shaukat Ali.

Oath not administered to child witness held the omission would not vitiate the proceedings or render evidence inadmissible. PLJ 1979 Cr.C. (Kar.) 14 Bashir Ahmad.

Child witness 4 or 5 years old. Conviction for sodomy on the basis of evidence of victim of 4 or 5 years of age is not maintainable when Magistrate fails to put questions to victim to find out if victim had any sense of sanctity of oath. Case remanded for retrial. PLJ 1974 Cr.C. (Bj) 441 Khalid.

7 years old witness. Mere tender age of a witness is no ground for the rejection of his evidence. 1971 P.Cr.L.J 1031 Shamshad.

Girl of 7 or 8 years possessing sufficient intelligence and her evidence not shaken in cross-examination. Held, her testimony rightly believed and relied upon by Court below. (SC) 1968 SCMR 852 Abdullah Shah.

A girl of 8 or 9 years of mature understanding capable of giving picture of occurrence and standing test of cross-examination. Such witness not considered a child witness. (DB) PLD 1965 Pesh. 134 Sikandar Shah.

Child of 9 years appearing as a witness. His statement amply corroborated by other witnesses. Testimony of such child witness relied upon for conviction, under section 302, PPC. (SC) 1969 SCMR 600 Umar.

Child witness 9/10 years old, uncorroborated and suffering from inherent contradictions. Accused given benefit of doubt and acquitted. 1975 P.Cr.L.J. 1319 Allah Diwaya. PLJ 1975 Cr.C. (Lah.) 299.

Child over 10 years. Testing intelligence of a witness of tender years, is not a condition precedent to reception of his evidence. No provision of law requires a Court to test intelligence of a child witness at an initial stage. Such steps are however desirable to save time of the Court. Child over 10 years of age is not of tender years. Provisions of section 118, Evidence Act do not apply to such a case. (DB) 1968 P.Cr.L.J 569 Hari Pada Delinath.

A boy of 12 years (much less of 15 years), cannot be said to be of tender age. (SC) 1968 SCMR 993- 1968 P.Cr.L.J 1552 Ghulam Mustafa.

Child witness: disinterested but positively under influence of investigating agency as unless tutored he could not have stated that the accused used rifle to commit the crime. (DB) PLD 1980 Pesh. 25. Abdul Hamid.

Child witness under influence though disinterested is positively tutored to give consistent evidence. (DB) PLJ 1980 Cr.C. (Pesh.). 132 Abdul Hamid.

Evidence of child witness needs corroboration as a rule of prudence even though the evidence inspires confidence. (DB) PLJ 1997 Cr.C. (Lah.) 1630, Mst. Shah Azizan.

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