

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.757-758 OF 2016

SATISH AND ANOTHER ETC.APPELLANT(S)

VERSUS

STATE OF HARYANA ...RESPONDENT(S)

J U D G M E N T

NAVIN SINHA, J.

The appellants stand convicted under Section 120-B, 302, 34 IPC and sentenced to life imprisonment. The appellant Satish has been further convicted under the Arms Act.

2. The deceased, husband of appellant Anita, was fatally assaulted inside his house at about 1.30 a.m. in the night intervening 31.03.2007/01.04.2007. PW-2 Sahil, the son of the deceased, went and informed PW-1 Sunita who lived next door. The police report was lodged by PW-1 the next morning at about 9:00 a.m. The postmortem of the deceased was conducted on 01.04.2007 by PW-10 Dr. Suman Tanwar, which revealed eight incised wounds and seventeen penetrating incised

wounds.

3. Ms. Prachi Bajpai, learned counsel for the appellants Satish and Kishan, submits that there was an unexplained delay of eight hours in lodgment of the First Information Report giving sufficient time for manipulation and false implication. PW-1 Sunita deposed in cross-examination that about 15-20 villagers had come on hearing the commotion, but none of them has been examined. PW-2, a child witness aged about 12 years, admitted not knowing the appellants since earlier. He claims dock identification for the first time, more than six months later, without any test identification parade held in the meantime. It cannot be safely relied upon as the witness may have had only a fleeting opportunity to see them during the alleged occurrence. Any recovery from them is irrelevant in absence of a forensic report with regard to the alleged weapons of assault. The conviction is, therefore, not sustainable and liable to be set aside.

4. Shri Mahabir Singh, learned senior counsel appearing on behalf of the appellant Anita, submitted that the primary material against her is an extra judicial confession stated to have been made to PW-4 on 08.04.2007, about a week after the occurrence. The entire edifice of a

conspiracy, with the assistance of Ramesh, to engage hired killers, collapses with his acquittal by the High Court. If the extra judicial confession was not acceptable in part, it had to be rejected completely. It could be held to be discredited for some purpose, and yet accepted as evidence for other purpose. Reliance was placed on ***Palvinder Kaur versus State of Punjab***, AIR 1952 SC 354. The Trial Court and the High Court have, therefore, materially erred in basing conviction by relying on the same as incriminating evidence. There was no reason for the appellant to make such disclosure nearly eight days later, when all along she was living with the family. PW-4 was a property dealer. The extra judicial confession evidence was manipulated by him because if the appellant was sent to jail, her children being minors, the witness could grab her property after the demise of her husband. PW-20 Satpal Singh, the Investigating Officer, has furnished no explanation why the statement of the appellant was not recorded under Section 161 Cr.P.C. when she was at home till 08.04.2007 and made an accused on that date. PW-4 stated that after the confession he accompanied the appellant to the police station at 5:00 p.m. But PW-7 states that the appellant was arrested from home on that date. No question was put to the appellant under Section 313 Cr.P.C. with regard to the extra judicial

confession. PW-16 Umesh Singh, the photographer, deposed that PW-18 Sombir, ASI informed him to come to the place of occurrence at 2.00 a.m. and he reached at 4.00 a.m. But PW-18 is completely silent on this aspect. Naturally, there must have been a first version of the occurrence disclosed to the police before lodging of FIR the next morning, which has been concealed by the prosecution. No investigation could have started before institution of a police report. PW-2 was a child witness aged about 12 years. It would be highly unsafe to rely on his evidence alone to sustain conviction without corroboration, relying on ***State of Delhi versus Vijaypal***, (1980) 1 SCC 582. The witness was staying with PW-4 after the occurrence. He had been tutored to depose against his mother, and therefore, his evidence was unreliable in the facts of the case. The false implication of the appellant is further evident from the statement of PW-7 that the appellant had killed the husband of PW-1, when the latter deposed that he had died of a heart attack. Despite finger prints having been taken from the place of occurrence and sent for forensic examination, no report was submitted. In the entirety of the evidence, false implication was a distinct possibility. The benefit of doubt, therefore, must go to the appellant. It was a case of a blind murder. The deceased had been killed elsewhere,

and the body dumped at home for false implication. The appellant is therefore entitled to acquittal.

5. Learned counsel for the respondent submitted that it is only a rule of prudence to seek corroboration in case of a child witness. It was not an invariable rule of criminal jurisprudence that without corroboration, the evidence of a child witness could not be accepted. The trial court and the High Court have accepted PW-2 to be a reliable witness. Conviction can be based on the solitary evidence of a child witness if it is otherwise reliable and inspires confidence. PW-4 was well-known to the appellant. The extra judicial confession was, therefore, not made to stranger. Merely because Ramesh has been acquitted giving him the benefit of doubt, the extra judicial confession does stand wiped off completely. The confession has been proved by PW-4.

6. We have considered the submissions. An extra judicial confession is a weak piece of evidence. Normally by itself it can be corroborative only. The confession in the present case was composite in nature, with regard to a conspiracy hatched with the assistance of Ramesh, to do away with the deceased. In view of acquittal of the latter, the observations in *Palvinder Kaur (supra)* in this regard assumes relevance

and it will not be safe to take the same into consideration. We shall, therefore, proceed to examine if there are other sufficient materials against the appellant or not.

7. Considering that the occurrence took place in the dead of night, and PW-1, being a lady deposed that she proceeded for the police station early in the morning, we find no infirmity to hold that the FIR was delayed, and therefore, may have been a result of prior deliberations.

8. PW-2 was the son of the appellant Anita. He was a school going child aged 12 years. Both, the trial Court and the High Court have found him to be reliable and convincing. We do not find anything from his evidence to make it suspicious as the result of any tutoring by PW-4. The witness has clearly mentioned that his mother was present in the room when the assault was taking place and she asked them to leave the room on the bidding of one of the assailants. We do find it a little strange, according to normal human behavior, that at the dead of night, the appellant after witnessing an assault on her own husband, did not rush to the house of PW-1 for informing the same and sent her minor son for the purpose. The fact that she created no commotion by shouting and seeking help reinforces the prosecution case because of

her unnatural conduct. We also cannot lose sight of the fact that the child witness was not deposing against another family member or a stranger, but his own mother. It would call for courage and conviction to name his own mother, as the child was grown up enough to understand the matter as a witness to a murder.

9. The witness has clearly identified the other two appellants also in the dock, having seen them during the occurrence. The number of injuries on the deceased is itself indicative that the assault lasted for some time enabling identification and did not end in a flash. We, therefore, find no reason to interfere with the conviction.

10. No defence was taken by the appellant Anita under Section 313 as to how her husband had died except for stating that it was a blind murder and that she wanted to lead evidence but did not do so. A speculative submission that he had been killed elsewhere and the body dumped at home to falsely implicate her is too far-fetched for consideration. We find no reason to interfere.

11. The appeals are dismissed.

.....**J.**
[L. NAGESWARA RAO]

.....**J.**
[NAVIN SINHA]

NEW DELHI;
MAY 26, 2017.

ITEM NO. 1
(For Judgment)

COURT NO. 5

SECTION IIB

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal Nos. 757-758 of 2016

Satish and Another etc.

.....Appellant(s)

VERSUS

State of Haryana

.....Respondent(s)

Date : 26/05/2017 This matters was called on for pronouncement of judgment today.

For Appellant(s) Mr. Rameshwar Prasad Goyal, AOR

Ms. Prachi Bajpai, AOR

For Respondent(s) Mr. Vishwa Pal Singh, AOR

Hon'ble Mr. Justice Navin Sinha pronounced the judgment of the Bench comprising of Hon'ble Mr. Justice L. Nageswara Rao and His Lordship.

The appeals are dismissed in terms of the non-reportable judgment.

(DEEPAK MANSUKHANI)

AR-cum-PS

(Signed non-reportable judgment is placed on the file)

(INDU POKHRIYAL)

Court Master