2025 INSC 774

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.1686-1688 OF 2023

Agniraj & Ors. etc. ... **Appellants**

versus

State through Deputy Superintendent of Police CB-CID ... **Respondent**

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL BACKGROUND

1. These appeals have been filed against the judgment dated 21st March 2019, of the High Court of Madras at Madurai. The impugned judgment upheld the conviction of the Accused Nos. 1 to 11 for the offences punishable under Sections 302 and 307 read with Section 149 of the Indian Penal Code, 1860 (for short, 'the IPC'), and Section 3(1) of the Tamil Nadu Prevention of Damage to Public Property Act. The Accused Nos. 1 and 9 to 11 have also been convicted under Section 147 of the IPC, while Accused Nos. 2 to 8 have been convicted under Section 148 of the IPC. The appellants were sentenced to suffer life imprisonment.

2. A First Information Report (for short, 'the FIR') was registered on 14th November 2012 under Sections 147, 148, 307, 302, and 120B of

the IPC and Section 3 of the Tamil Nadu Prevention of Damage to Public Property Act against thirty accused persons on a complaint made by PW-1.

3. The prosecution's case is that the family members of Accused No. 1 had occupied the post of President of the Panchayat Board for approximately four decades. In the 2011 elections, the wife of PW-1 won the elections. The brother of PW-1 (Deceased No. 1) worked extremely hard during the elections. Both sides allegedly engaged in numerous skirmishes in the months following the elections. On the night of 14th November 2012, Deceased No. 1 (Kathiresan/brother of PW-1), along with his son Prasanna (Deceased No. 2) and daughter Nikila (PW-9), were travelling in a car driven by his driver (Deceased No. 3). At around 9:30 p.m., a truck came towards them from the opposite side. In an attempt to avoid a collision, Deceased No. 3 swerved the Scorpio car to the left, and the truck grazed the car. Deceased No. 3 stopped the car after being hit. At that time, Accused No. 1 and some others arrived by three motorbikes, while others jumped from the truck and approached the car. The group was armed with weapons and attacked the car and its inmates, and attempted to set them on fire. PW-1 managed to escape and hid in a nearby bush. The group attacked the three deceased to death and inflicted serious knife injuries to PW-9. When the group tried setting the car on fire, they spotted some men in police uniforms and fled the scene.

4. After this, PW-1 narrated the incident to PW-52 (Sub-Inspector) and PW-56 (Deputy Superintendent of Police). A written complaint filed by PW-1 led to the registration of the FIR mentioned above. During the investigation, thirty-six persons were arraigned as accused. Out of them, fifteen persons were dropped by the prosecution, and a

chargesheet was filed against twenty-one persons. PW-1 gave his no objection to dropping the names of these fifteen persons. The prosecution also relied upon fingerprints lifted from the Scorpio car, which matched the fingerprints of Accused Nos. 2 and 3. PW-35, who prepared the fingerprint report, was examined as a witness. PW-46, who was a photographer and who took photographs of the fingerprints, was also examined. The prosecution has also stated that *aruvals* were recovered at the instance of Accused Nos. 2, 3, 4, 6 and 8. At the instance of Accused No. 5, a knife has been recovered. A wooden log was recovered at the instance of Accused No. 11. The prosecution has also placed reliance on paint flakes found in the Scorpio car that matched with that of the truck.

5. The Trial Court examined fifty-eight witnesses, out of which the material eye witnesses are PW-1(Krishnan) who is the informant, PW-2 (Loorthu Prabhu) who witnessed the incident with one Abdul Rahman, and PW-9 (Nikila) who is the minor daughter of PW-1 and sustained injuries.

6. Based on the evidence on record, the Trial Court vide judgment dated 29th September 2015 convicted Accused Nos. 1 to 11 and sentenced them to life imprisonment. The Trial Court acquitted Accused Nos. 12 to 21 of all the charges. Against this judgment of the Trial Court, Accused Nos. 1 to 11 filed an appeal against their conviction before the High Court. The State and PW-1 also challenged the acquittal of Accused Nos. 12 to 21. These appeals came to be decided by the High Court vide the impugned judgment which confirmed the findings of the Trial Court and dismissed all appeals.

SUBMISSIONS

7. The learned senior counsel appearing for the appellants submits that the case of the prosecution is based on three eye witnesses, namely PW-1, PW-2, and PW-9, all of which have material contradictions and cannot be relied upon. He took us through the depositions of PW-1 and contended that this was wholly unreliable as it has material embellishments and exaggerations. While PW-1 claims to have told PW-52 (Sub-Inspector) and PW-56 (Deputy Superintendent of Police) about the incident at the scene of the incident itself, no statement has been recorded by them. Instead, he, along with an advocate and members of his political party, went with a written complaint to the police station almost two hours after the incident. The learned senior counsel contends that PW-1 has exaggerated the incident and initially named thirty-six persons as accused. Therefore, he said that he has no objection if the names of fifteen accused persons are removed.

8. Regarding PW-2, the learned senior counsel for the appellants submits that PW-2 is a chance witness who allegedly saw the incident with one Abdul Rahman. This PW-2 emerged from thin air after 43 days from the date of the incident and Abdul Rahman has not even been examined. Accordingly, an adverse inference has to be drawn based on this. No test identification parade has been conducted either.

9. Regarding PW-9 who was 7 years and 11 months at the time of the incident and was examined at the age of about 9 years, the appellant contends that no preliminary questions were asked. In the

absence of *voir dire* examination, the appellant argues that no reliance can be placed on her statement.

10. In relation to other corroborating evidence, the learned senior counsel for the appellants has submitted that the fingerprint evidence is unreliable as PW-46 who was the photographer had denied taking the photos of the fingerprints and these photographs have not been exhibited either. No *Mazhar* was prepared of the fingerprints appearing in the car or while taking the fingerprints of the accused either. The learned senior counsel for the appellants also submits that there are contradictions in the recovery of weapons. No proper procedure was followed while collecting the paint flakes on the car either as *mazhar* was not prepared and no record was produced to show where the paint flakes were picked up from and to whom it was handed over.

11. The learned Additional Advocate General appearing for the State made a preliminary objection regarding the jurisdiction of this Court to consider the evidence that was on record before the Trial Court and the High Court. He made a distinction between the jurisdiction of this Court under Article 136 of the Constitution of India and Article 134 which is the criminal appellate jurisdiction. The learned senior counsel vehemently submitted that this Court while exercising jurisdiction under Article 136 has to only consider whether the findings recorded by the High Court or Trial Court suffers from any manifest illegality or perversity and cannot reappreciate evidence. In cases where there are concurrent findings of conviction such as the present, the learned senior counsel submitted that this Court cannot interfere with such findings by reappreciating evidence.

12. The learned senior counsel supported the findings of both the Trial Court and the High Court and submitted that the appellants

have not been able to controvert any of these findings. He stated that there is nothing to show that PW-1 was planted or was not present at the scene of the incident. The presence of PW-1 is also established by the statement of PW-9 and other witnesses. He submitted that there is no embellishment or material contradictions in the testimony of PW-1. The allegation of tutoring and making false allegations was rejected by the Trial Court and the High Court. He has also explained the delay of approximately 2 hours in registering the FIR by explaining the chain of events after the incident.

13. On the argument that there was a delay in recording the statement of PW-2, the learned senior counsel for the State contends that PW-2 could not approach the police as he had witnessed a gruesome attack by and against people he knew making his fear justifiable. The conduct of a person who has witnessed such a murderous assault can differ from person to person. As the statement of PW-2 has been consistent, it cannot be disregarded only because of the delay and because he knew PW-1 and his family. Further, it is not necessary that adverse inference has to be drawn for not examining Abdul Rahman as the totality of circumstances has to be seen.

14. The learned senior counsel submitted that the Trial Court and High Court found the testimony of PW-9 as reliable. The High Court had made an observation that preliminary questions were put to PW-9. Even if they were not put, it cannot be the sole reason for rejecting the witness testimony of PW-9. He has also relied on corroborating evidence such as the fingerprints of accused Nos. 2 and 3 being found in the car, blood recovery from bikes of the accused, and the paint flakes of the truck matching with the car. Accordingly, the learned senior counsel submitted that there is no scope to interfere with the

concurrent findings of both the Trial Court and the High Court in the limited jurisdiction that this Court has when hearing cases under Article 136 of the Constitution of India.

CONSIDERATION

Consideration of material prosecution witnesses

15. The material prosecution witnesses are PW-1 (Krishnan) who is the first informant and alleged eye-witness, PW-2 (Loorthu Prabhu) and PW-9 (Nikila), a minor witness. Firstly, we deal with the evidence of PW-1 (Krishnan). He stated that one of his brothers was working as the Secretary of the District Student Group in the AIADMK party. PW-1 (Krishnan) further deposed that the said brother was the deceased, Kathiresan. His wife is Prema. Kathiresan and Prema had two children, Prasanna and Nikila (PW-9). He stated that for 40 years, the father of the accused No.1 (since deceased), was the Panchayat President of Periyakannoor. After the demise of his father, accused No.1 and thereafter, his wife became the President. PW-1's wife (Sathya) and accused No.1's wife contested the election against each other in the year 2011. PW-1's wife was elected as the Panchayat President. Kathiresan worked hard in the election of Sathya. According to PW-1 (Krishnan), the accused No. 1 belonged to the Communist Party. He has given a history of the dispute between his family and the family of the accused.

16. He deposed about the incident that occurred on 14th November 2012 by stating that at about 6:30 pm, his brother Kathiresan, his son Prasanna and daughter Nikila (PW-9) came by a Scorpio car which was driven by his driver, Boominathan, to his village. He stated that when he along with Kathiresan started for Sivagangai in the night at 9

pm, Kathiresan was sitting on the seat to the left of the driver, PW-1 was on the rear seat behind his brother and Nikila (PW-9) and Prasanna were sitting on his right-hand side. He stated that at about 9:30 pm, an oncoming truck came towards the Scorpio car. To avoid a collision, the driver turned the car to the left side but the truck grazed the car. At that time, Kathiresan asked the driver to switch on the lights inside the car. He saw accused No. 7 (Vijaykumar) getting out of the truck with a 10-litre white can. At that time, 6 to 7 people got out of the truck with weapons like aruval, knife and wooden log. Four motorcycles came there. From the said motorcycles, accused No. 1 (Arjunan), accused No. 2 (Agniraj), accused No. 3 (Sathyaraj), accused No. 4 (Paulpandi), accused No. 6 (Yoganathan), accused No. 9 (Kanthamalai), accused No. 10 (Ganesan), accused No. 13 (Muthukumar) and accused No. 17 (Bose), came there. Accused No.1 (Arjunan) shouted to cut the persons sitting inside the car and burn them by pouring kerosene. At that time, accused Nos. 5 (Siva Kumar), 8 (Suresh @ Lenin Kumar),11 (Jayakumar), 14 (Kanagarajan) and 16 (Rajamani) also came with accused No.7 (Vijaykumar). Accused No.8 (Suresh @ Lenin Kumar) broke the car mirror and accused No.2 (Agniraj) smashed the windscreen of the car with the aruval in his hand. When Kathiresan got out of the car, accused No.2 (Agniraj) assaulted him with an aruval. By that time, PW-1 (Krishnan) had gotten out of the car. Kathiresan told him to run away. He ran into Karuvelam tree bush. He deposed that the accused No.3 (Sathyaraj) hit the head of Prasanna, and he fell into the nearby stream. Accused No.4 (Paulpandi) assaulted the driver of the car on his head with an aruval.

17. Accused No. 5 (Sivakumar) stabbed and injured the driver Boominathan with a knife. Accused No.6 (Yoganathan) pulled out

Nikila (PW-9) and assaulted her on her head with an aruval. Thereafter, all the accused came together and assaulted Kathiresan, his son and the driver. They poured kerosene, which was in the 10-litre white colour can, around the car. At the time of setting the car on fire, a van came from the other side. Accused No.3 (Sathyaraj) told the driver of the Tata Magic van to go away. However, the van stopped and two police men wearing uniforms got down of that van. The accused who came by motorcycles went back by motorcycles, and others sat in the truck of accused No.7 (Vijaykumar) and left. The witness stated that he saw two police men coming, and after the accused left, he came to the place of occurrence from the place where he was hiding in the bush. The witness claimed that he had seen the occurrence through the headlight of the car, the light inside the car and the light of the truck. The witness stated that he received a call from his father. At that time, the witness talked about the details of the incident to his father. Thereafter, one person stopped his Maruti car, and he called the telephone No. 108. The witness further stated that a bus came there and 4 to 5 policemen got down from the bus. The policemen enquired about the incident. These policemen informed the police department. He stated that Kathiresan, his son Prasanna and his driver died. Thereafter, the 108 van came. On his complaint, an FIR was registered.

18. Now, we come to the cross-examination of the PW-1. In the cross-examination, he stated that he was hiding in a bush during the occurrence. He came out after the police had arrived. He stated that when he went to the place of occurrence from the bush, the Deputy Superintendent of Police (for short 'the DSP') had arrived at the place. When he was crying, the DSP questioned him. He told the details to the DSP. He was not sure whether the DSP recorded the information

given by him in writing. He stated that from the Superintendent of Police to the higher police officers, all came to the place of occurrence. He stated that he went to the hospital at 10:45 pm. In the hospital, the doctors asked him about the incident. Though there were number of police officials in the hospital, no one enquired with him about the incident. He stated that he did not disclose anything to anyone. He stated that he went to the Taluka Police Station from the hospital, which is where he gave a complaint.

19. He admitted that when he gave the report for the first time, he stated that 36 persons stood around the car by which they were travelling. When his deceased brother got down from the car, he also got down from the car. In further cross-examination, he stated that he got down from the car and ran through the field and did not hide. He stated that he did not tell that to the police. He stated that he did not hide in the stream, he just ran across the stream and disappeared. He stated that no one had an axe in their hand and they were carrying rods. They did not attack anybody with the rods. They only attacked the car with the aruval and rod.

20. The witness stated that he showed to the DSP, the place where he was hiding. He accepted that it was dark at the time of the incident and nothing could be seen without light. He stated that he saw the incident with the help of the car light and other lights. Thereafter, he stated that there were more than 20 persons who were attacking the car by using aruvals, rods and wooden logs. The witness stated that when he lifted the deceased Prasanna, there was blood all over his head and body. He stated that his shirt and dhoti were fully stained in blood when the police arrived. In the cross-examination, he again claimed that he could see the incident from the place where he was

hiding. He stated that he did not remember whether he told in the police enquiry that accused-Vijayakumar got down along with a kerosene can.

21. A very lengthy cross-examination was done on political parties such as AIADMK and Community Party. He admitted that he had no objection for removal of persons named as accused by him earlier.

22. Then we come to the evidence of PW-2 (Loorthu Prabhu). At the time of incident, one Abdul Rehman was with PW-2. It must be noted here that the said Abdul Rehman has not been examined by the prosecution. He stated that while he, along with Abdul Rehman, were proceeding on a motorcycle on Ilayangudi road, deceased Kathiresan's car overtook them. Thereafter, a truck came towards the Scorpio car of Kathiresan. However, the driver drove the car to the left-hand side to avoid collision but the truck grazed the car. He stated that the accused No. 7 (Vijaykumar) got down from the driver's side of the truck and came along with one white colour can. Seven or eight people jumped along with him. Accused No. 8 (Suresh @ Lenin Kumar) came with aruval and accused No. 11 (Jayakumar) came with a wooden log. The witness stated that accused No. 1 (Arjunan), accused No. 2 (Agniraj), accused No. 3 (Sathyaraj), accused No. 6 (Yoganathan), accused No. 9 (Karanthamalai), accused No. 10 (Ganesh) arrived along with accused No. 4 (Paulpandi) and accused No. 5 (Sivakumar). They were carrying aruvals and wooden logs. He stated that the headlights of the car were on. He and Abdul Rehman disappeared behind a Tamarind tree. He stated that accused No. 1 (Arjunan) showed to Kathiresan and set him on fire by pouring kerosene. At that time, accused No. 8 (Suresh @ Lenin Kumar) smashed the side mirror of the car with the aruval in his hand. Kathiresan got out of the car, at that time, accused No. 2

(Agniraj) assaulted deceased Kathiresan on his head with his aruval. He said that "you have spoiled my life and you will die with it". He alleged that accused No. 3 (Sathyaraj) cut Kathiresan's head with an aruval. He alleged that accused No. 4 (Paulpandi) and accused No. 5 (Sivakumar) cut Boominathan's head. Accused No. 5 (Sivakumar) stabbed him in the right and left shoulders with the knife. Accused No. 6 (Yoganathan) pulled PW-9 (Nikila) out of the car and assaulted her on her head with an aruval. She fell down. Thereafter, accused No. 3 (Sathyaraj) and 7 (Vijayakumar) poured kerosene around Kathiresan and his car. At that time, one Tata Magic van came. Acccused No. 8 (Suresh @ Lenin Kumar) and 9 (Karanthamali) told persons in the van not to stop, otherwise, they would kill them. However, the van stopped and policemen in uniform got down from the van and went to the place of occurrence.

23. What is important to note is that next day, in the morning, he dropped Abdul Rehman at his house, kept his motorcycle in his sister's house and left for Coimbatore. He stated that he came to know about the incident when he saw it in the newspaper. He stated that he was scared to tell anybody about the incident. He stated that on 24th December, 2012, he came to the village for Christmas. After hearing a sermon, he went to CBCID office at Madurai on 26th December, 2012 and told the truth. So, for 1 month and 12 days, witness did not inform the police about the incident. All this has come in the examination-in-chief of the witness.

24. In the cross-examination, he admitted that after the occurrence, he went to his house directly with his friend. When he went to his house, his father was there. On the next day, he left his house at 5 am or 6 am. Thereafter, he came to his friend's place in Sivagangai. Thus,

there is a gross delay on the part of the police in recording statement of PW-2 (Loorthu Prabhu). There is no explanation for this delay.

25. Now, we come to the evidence of PW-9 (Nikila). The law is well settled that before proceeding to record the evidence of a minor witness, preliminary questions must be asked by the Court to ascertain whether the witness is able to understand the questions and answer the same. The Court must be satisfied about the capacity of the minor to understand the questions and answer the same. In this case, the age of PW-9 (Nikila) was 10 years. However, preliminary questions were not put to the witness. The Court did not ask any question to the witness to ascertain whether she understands the importance of an oath. Without satisfying himself that the witness understands the importance of an oath, the learned Trial Judge administered oath to her. It is very well known that child witnesses are susceptible to tutoring and therefore, not asking preliminary questions to the minor witness makes her evidence very vulnerable.

26. The witness states that she was able to identify the persons who attacked them on that day. She stated that she had not identified the persons earlier whom she was now identifying in the Court. The witness identified some of the accused sitting in the Court. She stated that she was seeing them for the first time after the date of the incident. Admittedly, test identification parade was not conducted. She stated that her mother told her in detail what had happened to her and how many days she was in the hospital.

27. As noted earlier, PW-9 (Nikila) was 10 years old on the date of recording of evidence. The Trial Court has not followed the condition precedent before examining a minor witness. Before administering

oath, the learned Trial Judge did not satisfy himself that the witness understood the importance of the oath.

28. Moreover, she deposed that after the date of occurrence, for the first time in the Court, she identified several accused. But test identification parade was not held. From the answers given in the cross-examination that her mother told her the details of what happened to her, the possibility of tutoring the witness cannot be ruled out. Minors are prone to tutoring and in this case, we are dealing with a minor child who was 10 years old.

29. In the evidence of PW-1, it is brought on record that accused No. 1's wife was defeated by PW-1's wife (Sathya) in the local panchayat election. Accused No. 1 belongs to the Communist Party of India and PW-1's wife (Sathya) was a member of the AIADMK political party. Though the DSP and other police officers met PW-1 (Krishnan) at the scene of the offence, they did not record his statement. It has come on record that PW-1 (Krishnan) did not directly go to the police station to record his complaint. Instead, PW-1 (Krishnan) along with an advocate (Thangapandiyan), PW-14 (Anbumani, AIADMK Counsellor) and PW-15 (Nickson Anand, AIADMK Secretary) went to the police station and handed over a written complaint to PW-52. There was a political rivalry between him and accused No. 1. PW-1's wife was a member of AIADMK. The possibility of filing complaint after deliberation with the supporters of AIADMK cannot be ruled out. In the written complain, PW-1 (Krishnan) named 22 persons as accused. During investigation, 36 persons were treated as accused, out of which, only 21 persons were charged. By a report at Exhibit P-107, 15 accused persons were dropped with the consent of PW-1 (Krishnan). The reason given in the report is that PW-1 (Krishnan) was nervous and hence, he exaggerated

the incident by naming the said 15 accused. He gave no objection for deletion of 15 accused. PW-1 (Krishnan) admitted that, in his report, he stated that 36 persons stood around the Scorpio car. Then he came out with the theory that there were 20 persons. PW-1 (Krishnan) has obviously exaggerated the incident due to their political rivalry. It is obvious that he was unsure about the number of accused who were present at the time of the incident. Out of the 21 accused who were ultimately charged, accused Nos. 1 to 11 were convicted and other accused were acquitted. The incident happened after 09:30 pm. PW-1 (Krishnan) has not stated the distance between the bush in which he was hiding and the spot of the incident. There is a serious doubt whether he could have seen the incident in the light of the car. Therefore, the evidence of PW-1 (Krishnan) does not inspire confidence.

30. As far as PW-2 (Loorthu Prabhu) is concerned, for more than one and a half months, he did not approach the police or filed a complaint in any form. He claims to have become wise after a gap of 43 days after hearing a sermon during Christmas. Considering the conduct of the witness of remaining silent for a long period of one and a half months, the testimony of this witness cannot be believed. Moreover, during this period, he moved from place to place. It is not his case that anyone threatened him during the said period. Moreover, he stated that one Abdul Rehman was an eye-witness. However, the prosecution failed to examine him. Therefore, adverse inference will have to be drawn against the prosecution.

31. As far as PW-9 (Nikila) is concerned, we have already recorded reasons for discarding her testimony. Since the condition precedent for

recording of statement of PW-9 (Nikila) for evidence has not been satisfied, her testimony has to be kept out of consideration.

Consideration of other materials on record

32. The prosecution has heavily relied upon the evidence of fingerprints of accused No. 2 (Agniraj) and accused No. 3 (Sathyaraj) found on the Scorpio car. PW- 46 (Prithiviraj) is a photographer who allegedly took photographs of the fingerprints. What is important is that no *Mahazar* was drawn at the time of taking photographs of the fingerprints allegedly appearing on the Scorpio car. Moreover, the photographs taken were not exhibited. Similarly, no *Mahazar* was recorded while taking the fingerprints of the accused. The case of the prosecution is that the fingerprints found on Scorpio car matched the specimen fingerprints of accused Nos. 2 (Agniraj) and 3 (Sathyaraj). This fact becomes relevant only if the fact of taking photographs of fingerprints on the Scorpio car is proved. PW-46 (Prithviraj) stated that he took photographs of the fingerprints on the Scorpio car. In the cross-examination, he stated that he did not remember whether he had taken photos of fingerprints like that earlier. His examination-in-chief is silent about any *Mahazar* drawn at the time of taking photographs of the fingerprints on the car. The failure of the prosecution to draw a *Mahazar* or *Panchnama* at the time of taking photographs of the fingerprints on the car goes to the root of the matter. The case made out by the prosecution cannot be accepted for the reasons recorded above.

33. Then we come to the evidence of recovery. According to the prosecution, aruvals were recovered at the instance of accused Nos. 2 (Agniraj), 3 (Sathyaraj) and 6 (Yoganathan) from the bush near the

shutter of Periya Ooran in Athapadaki village. The recovery is shown from the same place on 5th December, 2012 at three different times. Even recovery of aruval at the instance of accused No. 4 (Paulpandi) and recovery of knife at the instance of accused No. 5 (Sivakumar) was at two different times on 10th December, 2012 from the same place which is a thorny bush under the bridge on the way to EID Parry Company. A wooden log was recovered at the instance of accused No. 11 (Jayakumar) from the bush opposite to Government Arts College which is an open place. Aruval was shown recovered at the instance of accused No. 8 (Suresh @ Lenin Kumar) from bushes in a dilapidated building opposite to Government hostel for college students.

34. The evidence of PW-2 (Loorthu Prabhu) and PW-9 (Nikila) is required to be discarded for the reasons which were set out above. We have also found that the evidence of PW-1 is not trustworthy. In any case, the conviction cannot be supported only on the basis of his evidence.

35. We have perused the judgments of the Trial Court and the High Court. We found that both the courts have completely brushed aside the factors which we have highlighted above from the evidence which make it impossible for any Court to believe the testimonies of these three witnesses and act upon the same. According to us, if evidence of PW-1 (Krishnan), PW-2 (Loorthu Prabhu) and PW-9 (Nikila) and fingerprints allegedly found are to be ignored, what remains is the evidence of the alleged recovery of weapons at the instance of the accused. Only on the basis of recovery, by no stretch of imagination can the accused be convicted.

Scope of Appellate Jurisdiction of this Court under Article 136 of the Constitution

36. Learned counsel appearing for the State tried to make a distinction between appellate jurisdiction in criminal matters of this Court under Article 134 and jurisdiction under Article 136. He mainly relied upon the decisions of this court in the case of ***Pappu v. State of Uttar Pradesh***[1] and ***Mst Dalbir Kaur and Others v. State of Punjab***[2]. He submitted that these two decisions dealing with the scope of appellate jurisdiction of this Court under Article 136 of the Constitution have been consistently followed.

37. In paragraphs 63 and 71 of the decision of this Court in the case of ***Pappu v. State of Uttar Pradesh***[1] it was held thus:

> "***The scope and width of these appeals***
> **63.** As could be readily noticed, in the wide range of submissions made on behalf of the appellant, the concurrent findings leading to his conviction have been challenged as if it were a matter of regular appeal; and are practically to the effect that the entire evidence led in the matter be reappreciated on its contents as also its surrounding factors. However, while entering into the process of analysis, we cannot lose sight of the fact that the present one is a matter of concurrent findings of fact by the trial court and the High Court. Though the periphery of an appeal by special leave under Article 136 of the Constitution of India and the parameters of examining the matters in such appeals have been laid down repeatedly by this Court in several of the decisions but, having regard to the submissions made in this case, we feel rather impelled to recapitulate the nuanced principles, particularly on

1 (2022) 10 SCC 321
2 (1976) 4 SCC 158

> the subtle but relevant distinction in the scope of a regular appeal and an appeal by special leave.
>
> **71.** In summation of what has been noticed hereinabove, it is but clear that as against any judgment/final order or sentence in a criminal proceeding of the High Court, regular appeals to this Court are envisaged in relation to the eventualities specified in Article 134 of the Constitution of India and Section 2 of the 1970 Act. The present one is not a matter covered thereunder and the present appeals are by special leave in terms of Article 136 of the Constitution of India. In such an appeal by special leave, where the trial court and the High Court have concurrently returned the findings of fact after appreciation of evidence, each and every finding of fact cannot be contested nor such an appeal could be dealt with as if another forum for reappreciation of evidence. Of course, if the assessment by the trial court and the High Court could be said to be vitiated by any error of law or procedure or misreading of evidence or in disregard to the norms of judicial process leading to serious prejudice or injustice, this Court may, and in appropriate cases would, interfere in order to prevent grave or serious miscarriage of justice but, such a course is adopted only in rare and exceptional cases of manifest illegality. Tersely put, it is not a matter of regular appeal. This Court would not interfere with the concurrent findings of fact based on pure appreciation of evidence nor it is the scope of these appeals that this Court would enter into reappreciation of evidence so as to take a view different than that taken by the trial court and approved by the High Court."

37.1 In appropriate cases, this Court can interfere with the concurrent findings of the Courts when the assessment of evidence is vitiated by misreading of the evidence. However, this should be done in rare and exceptional cases of manifest illegality.

38. In the case of ***Mst Dalbir Kaur and Others v. State of Punjab***[2], in paragraphs 2, 3 and 8, this Court held thus:

> **"2.** Two questions arise in these appeals:
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> "(*1*) Can this Court in a criminal appeal by special leave enter into a fresh review or reappraisement of the evidence and examine the question of credibility of witnesses where the two courts have concurrently found that the prosecution case against the appellants has been proved; and
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> (*2*) Is it open to the appellants, once special leave is granted, to argue on questions of fact at the hearing, or is he required to confine his arguments only to the points on which special leave could be granted."
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> Not that these points are not covered by authorities but in spite of a catena of decisions of this Court laying down the various principles from time to time over two decades and a half, counsel for the parties have been insisting upon this Court to go into the questions of fact in order to examine whether the judgment of the High Court is correct. I would, therefore, like to review the decisions of this Court on the two points mentioned above so as to clarify the position and settle the controversy once for all.
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> **3.** As to the principles on which special leave is granted by this Court, the same have been clearly and explicitly enunciated in a large number of decisions of this Court. It has been pointed out that the Supreme Court is not an ordinary court of criminal appeal and does not interfere on pure questions of fact. It is only in very special cases where the court is satisfied that the High Court has committed an error of law or procedure as a result of which there has been a serious miscarriage of justice that the court would interfere with the concurrent findings of the High Court and the trial court. It has also been pointed out by this Court more than once that it is not in the province of this Court to reappraise the evidence and

to go into the question of credibility of the witnesses examined by the parties, particularly when the courts below have after considering the evidence, given their findings thereon. In other words, the assessment of the evidence by the High Court would be taken by this Court as final, unless it is vitiated by any error of law or procedure, by the principles of natural justice, by errors of record or misreading of evidence, non-consideration of glaring inconsistencies in the evidence which demolish the prosecution case or where the conclusion of the High Court is manifestly perverse and unsupportable and the like. As early as 1950 this Court in *Pritam Singh* v. *State* [1950 SCC 189 : AIR 1950 SC 169 : 1950 SCR 453 : 51 Cri LJ 1270] speaking through Fazal Ali, J. (as he then was) observed as follows:

"The obvious reply to all these arguments advanced by the learned counsel for the appellant, is that this Court is not an ordinary court of criminal appeal and will not, generally speaking, allow facts to be reopened, especially when two courts agree in their conclusion in regard to them and when the conclusions of fact which are challenged are dependent on the credibility of witnesses who have been believed by the trial court which had the advantage of seeing them and hearing their evidence.

In arguing the appeal, Mr Sethi proceeded on the assumption that once an appeal had been admitted by special leave, the entire case was at large and the appellant was free to contest all the findings of fact and raise every point which could be raised in the High Court or the trial court. This assumption is, in our opinion, entirely unwarranted.

The rule laid down by the Privy Council is based on sound principle, and, in our opinion, only those points can be urged at the final hearing of the appeal which are fit to be urged at the preliminary stage when leave to appeal is asked for, and it would be

illogical to adopt different standards at two different stages of the same case.

On a careful examination of Article 136 along with the preceding article, it seems clear that the wide discretionary power with which this Court is invested under it is to be exercised sparingly and in exceptional cases only....

Generally speaking, this Court will not grant special leave, unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against."

Analysing this decision, two principles appear to have been clearly laid down by this Court:

"(*1*) that in appeals by special leave against the concurrent findings of the courts below, this Court would not go into the credibility of the evidence and would interfere only when exceptional and special circumstances exist which result in substantial and grave injustice having been done to the accused; and

(*2*) that even after special leave has been granted the appellant is not free to contest all the findings of fact, but his arguments would be limited only to those points even at the final hearing, which could be urged at the stage when the special leave to appeal is asked for."

This case was followed by another Bench decision of this Court a little later in *Mohinder Singh* v. *State* [1950 SCC 673 : AIR 1953 SC 415 : 1950 SCR 821] where this Court observed thus:

"This Court, as was pointed out in *Pritam Singh* v. *State* [1950 SCC 189 : AIR 1950 SC 169 : 1950 SCR 453 : 51 Cri LJ 1270] will not entertain a criminal appeal except in special and exceptional cases where it is manifest that by a disregard of the forms of legal process or by a violation of the

principles of natural justice or otherwise substantial and grave injustice has been done."

In *Hem Raj* v. *State of Ajmer* [AIR 1954 SC 462 :1954 SCR 1133 : 1954 Cri LJ 1313] the same principle was reiterated by Mahajan, C.J., speaking for the Court, where it was observed thus:

"Unless it is shown that exceptional and special circumstances exist that substantial and grave injustice has been done and the case in question presents features of sufficient gravity to warrant a review of the decision appealed against, this Court does not exercise its overriding powers under Article 136(1) of the Constitution and the circumstance that because the appeal has been admitted by special leave does not entitle the appellant to open out the whole case and contest all the findings of fact and raise every point which could be raised in the High Court. Even at the final hearing only those points can be urged which are fit to be urged at the preliminary stage when the leave to appeal is asked for."

In *Khacheru Singh* v. *State of Uttar Pradesh* [AIR 1956 SC 546 : 1956 Cri LJ 950] it was pointed out that this Court does not interfere with the findings of fact arrived at by the courts below, unless something substantial has been shown to persuade this Court to go behind the findings of fact. Imam, J., who spoke for the Court observed as follows:

"In an appeal by way of special leave this Court usually does not interfere with the findings of fact arrived at by the courts below and nothing substantial has been shown to persuade us to go behind the findings of fact arrived at by them."

In *Saravanabhavan* v. *State of Madras* [AIR 1966 SC 1273 : 1966 Cri LJ 949] Hidayatullah, J., (as he then was) speaking for the majority crystallised and reiterated the principles already laid down by this Court on previous occasions and observed as follows:

"No doubt this Court has granted special leave to the appellants but the question is one of the principles which this Court will ordinarily follow in such an appeal. It has been ruled in many cases before that this Court will not reassess the evidence at large, particularly when it has been concurrently accepted by the High Court and the court or courts below. In other words this Court does not form a fresh opinion as to the innocence or the guilt of the accused. It accepts the appraisal of the evidence in the High Court and the court or courts below. Therefore, before this Court interferes something more must be shown, such as, that there has been in the trial a violation of the principles of natural justice or a deprivation of the rights of the accused or a misreading of vital evidence or an improper reception or rejection of evidence which, if discarded or received, would leave the conviction unsupportable, or that the court or courts have committed an error of law or of the forms of legal process or procedure by which justice itself has failed. We have, in approaching this case, borne these principles in mind. They are the principles for the exercise of jurisdiction in criminal cases, which this Court brings before itself by a grant of special leave."

The minority judgment in the same case by Wanchoo, J., (as he then was), so far as the question of interference by this Court was concerned, also took more or less the same view and observed as follows:

"Ordinarily, this Court does not go into the evidence when dealing with appeals under Article 136 of the Constitution particularly when there are concurrent findings. This does not mean that this Court will in no case interfere with a concurrent finding of fact in a criminal appeal; it only means that this Court will not so interfere in the absence of special circumstances. One such circumstance is where there is an error of law vitiating the finding as, for example, where the conviction is based on the testimony of an accomplice without first considering the question whether the accomplice is a reliable witness. Another

circumstance is where the conclusion reached by the courts below is so patently opposed to well established principles of judicial approach, that it can be characterised as wholly unjustified or perverse."

The only difference between the two views was that while the majority view was that except for the principles mentioned above the Supreme Court could never interfere with the concurrent findings of fact in a criminal appeal, the minority view agreed with the principles but it held that in view of special circumstances as pointed out in the observations quoted above the Court could interfere. At any rate, according to both the views the ratio is that this Court would not normally interfere with the concurrent findings of fact, unless there are special circumstances justifying interference.

8. Thus, the principles governing interference by this Court in a criminal appeal by special leave may be summarised as follows:

"(*1*) that this Court would not interfere with the concurrent finding of fact based on pure appreciation of evidence even if it were to take a different view on the evidence;

(2) that the Court will not normally enter into a reappraisement or review of the evidence, unless the assessment of the High Court is vitiated by an error of law or procedure or is based on error of record, misreading of evidence or is inconsistent with the evidence, for instance, where the ocular evidence is totally inconsistent with the medical evidence and so on;

(*3*) that the Court would not enter into credibility of the evidence with a view to substitute its own opinion for that of the High Court;

(*4*) that the Court would interfere where the High Court has arrived at a finding of fact in disregard of a judicial process, principles of natural justice or a fair hearing or has acted in violation of a mandatory

provision of law or procedure resulting in serious prejudice or injustice to the accused;

(*5*) this Court might also interfere where on the proved facts wrong inferences of law have been drawn or where the conclusions of the High Court are manifestly perverse and based on no evidence."

It is very difficult to lay down a rule of universal application, but the principles mentioned above and those adumbrated in the authorities of this Court cited supra provide sufficient guidelines for this Court to decide criminal appeals by special leave. **Thus, in a criminal appeal by special leave, this Court at the hearing examines the evidence and the judgment of the High Court with the limited purpose of determining whether or not the High Court has followed the principles enunciated above. Where the Court finds that the High Court has committed no violation of the various principles laid down by this Court and has made a correct approach and has not ignored or overlooked striking features in the evidence which demolish the prosecution case, the findings of fact arrived at by the High Court on an appreciation of the evidence in the circumstances of the case would not be disturbed**."

(emphasis added)

38.1 This decision refers to the requirement of this Court examining the evidence and judgment of the High Court. It lays down that if this Court finds that High Court has overlooked striking features in the evidence which demolish the prosecution's case, a finding of fact recorded can be disturbed by this Court.

39. None of these decisions prevent this Court from reappreciating evidence in a criminal appeal arising out of Article 136 of the Constitution against an order of conviction. Without appreciating the evidence, this Court cannot decide whether the case is within the

parameters laid down in the aforesaid decisions. These decisions only lay down the self-imposed constraints on interference with the concurrent findings of the fact recorded by the Trial Court and the High Court.

40. In this case, the analysis of the evidence of material witnesses made by us shows that the Trial Court and High Court have misread the evidence of these material prosecution witnesses. Very striking features of the prosecution's case and evidence have been ignored by the Courts.

41. Therefore, in this case, interference will have to be made with the impugned judgments. We are of the view that the guilt of the accused has not been proved beyond a reasonable doubt. All the appellants have undergone sentence for more than 9 years and 4 months.

42. Hence, the appeals are allowed. The impugned Judgments of the High Court and the Trial Court are hereby set aside and the appellants are acquitted of the offences alleged against them. They shall be released from custody forthwith, if not required in any other case.

.....J.
(Abhay S. Oka)

.....J.
(Ujjal Bhuyan)

New Delhi;
May 23, 2025