

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 93 OF 2011

MOHD. BABBAN & ANR.

Appellant(s)

VERSUS

STATE (DELHI ADMN.) DELHI

Respondent(s)

O R D E R

1. Originally, five accused faced the trial for the offence punishable under Section 302 of Indian Penal Code for causing the death of Ms. Tasleem.

2. The learned Trial Judge convicted all of them for the offence punishable under Part-I of Section 304 of Indian Penal Code and sentenced them to suffer rigorous imprisonment for 7 years.

3. All the five accused preferred an appeal. Out of them, accused No.5 (Mohd. Arafeen), who is the brother of the appellant No.1 (Mohd. Babban), was acquitted by the learned High Court.

4. However, so far as the other four accused, including the present appellants are concerned, their conviction was converted to Part-II of 304 of

Indian Penal Code and the sentence of seven years rigorous imprisonment was maintained.

5. Being aggrieved thereby, the present appeal is filed by the appellants.

6. Shr. Mohd. Saleem, learned counsel for the appellants submits that the Trial Court as well as the High Court grossly erred in convicting the present appellant(s). He submits that no role has been attributed to the present appellant(s). He further submits that, as a matter of fact, it is the deceased and his family members who had come to attack the appellant No.1 at his house. He, therefore, submits that the appeal deserves to be allowed and the appellants be acquitted from the charges charged with.

7. Shri Nachiketa Joshi, learned counsel appearing for the respondent-State has vehemently opposed the appeal. He submits that both the learned Trial Court as well as the High Court have convicted the appellants in correct appreciation of evidence. He submits that, in any case, a very lenient view has been taken by the High Court by convicting the appellants under Part-II of Section

304 of the Indian Penal Code. He, therefore, submits that no interference is warranted in the present case.

8. It is not in dispute that there is previous enmity between the family of the appellants and the family of the deceased. The star witness in the present case is PW-2 (Smt. Parveena), widow of the deceased.

9. It could be seen from her evidence that there are material omission and contradictions.

10. In the celebrated case Vadivelu Thevar vs The State Of Madras - AIR (1957) SC 614, the privy council has held that there are three types of witnesses; wholly reliable, wholly unreliable and partly reliable & partly unreliable. Further, it has been held that where the witness is wholly reliable there is no difficulty, as conviction could be based on the basis of evidence of such witness. Equally, when the witnesses is wholly unreliable, there would be no difficulty as no conviction could be based on the evidence of such a witness.

12. The difficulty arises when the witnesses are

partly reliable and partly unreliable. In case of such an evidence, the Court is required to separate chaff from the grain.

13. As already discussed hereinabove, it is not disputed that there is previous enmity between the two families. [Though the previous enmity with the deceased victim could provide motive, the possibility of false implication cannot also be ruled out].

14. From the perusal of the evidence, it would reveal that in so far as the role attributed to the present appellants of exhortation is concerned, the same is an improvement, inasmuch as in the statement given to the police, there is no such mention. This omission has been proved in the evidence of I.O. As such, the possibility of implicating the entire members of the family cannot be ruled out.

15. In so far as the other two accused are concerned, specific role is attributed to them of assaulting with weapons.

16. One of the appeals of other accused-Nadeem has been already dismissed by us by the order of

even date.

16. As already discussed hereinabove, on account of previous enmity, the possibility of the present appellant(s) being falsely implicated cannot be ruled out. As such, the appellants are entitled to get the benefit of doubt.

17. We, therefore, quash and set aside the concurrent orders of conviction and sentence awarded by the High Court as well as the Trial Court and hold the accused to be not guilty on account of the benefit of doubt.

18. Consequently and in light of the above, the appeal is allowed. The appellants are on bail. Their bail bonds shall stand discharged.

19. Pending application(s), if any, stand(s) disposed of.

.....J
(B.R. GAVAI)

.....J
(VIKRAM NATH)

New Delhi
February 23, 2023

ITEM NO.114

COURT NO.8

SECTION II-C

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 No(s). 93/2011

MOHD.BABBAN & ANR.

Appellant(s)

VERSUS

THE STATE(DELHI ADMN.) DELHI

Respondent(s)

WITH

SLP(Cr1) No. 3849/2014 (II-C)

Date : 23-02-2023 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE VIKRAM NATH

For Appellant(s)

Mrs. Shally Bhasin, AOR
Mr. Mohd. Saleem, Adv.
Mr. Mohd. Khurshid, Adv.
Mr. Nasir, Adv.
Mr. Kartik Gupta, Adv.
Ms. Shabnam Saleem, Adv.

Mr. Varinder Kumar Sharma, AOR

For Respondent(s)

Mr. Nachiketa Joshi, Adv.
Mr. Gurmeet Singh Makker, AOR

UPON hearing the counsel the Court made the following
O R D E R

Cr1. A. No. 93/2011

1. The appeal is allowed in terms of the signed order.
2. Pending application(s), if any, stand(s) disposed of.

SLP (CRL.) NO. 3849 OF 2014

1. We see no reasons to interfere with the concurrent orders passed by the Courts below.

2. The special leave petition is dismissed accordingly.

3. Pending application(s), if any, stand(s) disposed of.

(DEEPAK SINGH)
COURT MASTER (SH)

(ANJU KAPOOR)
COURT MASTER (NSH)

[Signed order is placed on the file]

