

Kalu @ Amit vs State Of Haryana on 17 August, 2012

Equivalent citations: AIR 2012 SUPREME COURT 3212, 2012 AIR SCW 4605, AIR 2012 SC (CRIMINAL) 1551, 2012 (4) AIR JHAR R 757, (2012) 118 ALLINDCAS 267 (SC), 2012 CRILR(SC MAH GUJ) 792, (2013) 1 MH LJ (CRI) 213, (2013) 1 RAJ LW 332, 2012 CRILR(SC&MP) 792, 2012 (118) ALLINDCAS 267, 2012 (4) ALLCRILR 256, 2012 (3) SCC(CRI) 761, 2012 (7) SCALE 404, 2012 (3) CALCRILR 349, 2012 (79) ALLCRIC 348, 2012 (8) SCC 34, (2012) 53 OCR 448, (2012) 3 DLT(CRL) 541, (2012) 7 SCALE 404

Bench: Ranjana Prakash Desai, Aftab Alam

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1467 OF 2007

KALU @ AMIT

...

APPELLANT

Versus

STATE OF HARAYNA

...

RESPONDENT

WITH

CRIMINAL APPEAL NO. 868 OF 2008

JOGINDER & ANR.

...

APPELLANTS

Versus

STATE OF HARYANA

...

RESPONDENT

JUDGMENT

(SMT.) RANJANA PRAKASH DESAI, J.

1. These two appeals, by special leave, can be disposed of by a common judgment as they challenge the judgment and order dated 11/7/2006 passed by the High Court of Punjab & Haryana whereby the High Court dismissed the criminal appeal filed by the appellant - Kalu @ Amit (original accused 3) and the criminal appeal filed by appellants Joginder and Varun Kumar (original accused 1 and 2

respectively) challenging judgment and order dated 7/9/2000 delivered by the Additional Sessions Judge, Rewari convicting them for offence under Section 302 read with Section 34 of the Indian Penal Code (for short, 'the IPC') and sentencing them to life imprisonment. We shall refer to the accused wherever necessary by their names, for the sake of convenience.

2. The case of the prosecution is that on 7/4/1999 PW-5 Ram Chander Yadav had gone to Ahir College, Rewari for attestation of his certificates. He met PW-4 Karambir Yadav there. At about 8.30 a.m., he went to Geography Department of the college. Pushpinder (the deceased) was standing there. The deceased asked PW-5 Ram Chander Yadav as to how he was there. PW-5 Ram Chander Yadav informed him that he was there as he had to get copies of his certificates attested. By that time, suddenly, the accused equipped with deadly weapons came running towards the deceased, who was standing in the company of PW-5 Ram Chander Yadav and PW-4 Karambir Yadav. Kalu @ Amit dealt a sword blow on the 'takna' (ankle) of the deceased. The deceased ran towards the office of the Principal to save his life. PW-5 Ram Chander Yadav ran behind him. Varun Kumar, who was also chasing the deceased, dealt a blow with a sword on the leg of the deceased. The deceased ran ahead. PW-5 Ram Chander Yadav caught hold of Joginder and Varun Kumar. Kalu @ Amit showed him the sword. PW-5 Ram Chander Yadav then set Joginder and Varun Kumar free. The deceased fell on the ground in front of the office of the Principal. Joginder dealt a sword blow on his forehead. Thereafter, all the accused ran away from the place of occurrence by jumping over the boundary wall of the college. PW-5 Ram Chander Yadav lifted the deceased and placed him at some distance. PW-4 Karambir Yadav helped him in doing so. By that time college boys gathered there. They arranged for a car by which PW-4 Karambir Yadav and PW-5 Ram Chander Yadav took the deceased in injured condition to the Civil Hospital, Rewari, where he was declared dead.

3. PW-1 Dr. Sunita Garg, who was at the relevant time posted as Medical Officer at the Civil Hospital, Rewari, sent 'ruqa' to the Station House Officer (SHO), Police Station, Rewari informing him that Pushpinder was brought dead to the hospital. On receipt of 'ruqa' PW-8 Raja Ram, SHO along with other police personnel rushed to the Civil Hospital, Rewari where he met PW-4 Karambir Yadav. PW-8 Raja Ram recorded PW-4 Karambir Yadav's statement which was treated as FIR (PD/2). On the basis of the said FIR, investigation was set into motion.

4. PW-1 Dr. Sunita Garg conducted the post mortem on the deceased and opined that death was due to hemorrhage and shock, as a result of head injury and injury to femoral vessels.

5. Pursuant to the statements made by the accused on 16/4/1999, PW-10 Inspector Mahabir Singh recovered 'khukhri' from the upper shelf of the bed room of the house of Joginder in Village Budhpur, 'sword' from the turi room of Kalu @ Amit's house in Village Budhpur and 'knife' from the turi room of Varun Kumar's house in Village Budhpur.

6. On completion of investigation, the accused were charged for the offence punishable under Section 302 read with Section 34 of the IPC. The prosecution, in support of its case, examined as many as 10 witnesses. The accused denied the prosecution case and claimed to be tried.

7. Upon perusal of the evidence, the Sessions Court convicted and sentenced the accused as aforesaid. As stated above, the criminal appeals filed by the accused were dismissed by the High Court by the impugned order, hence, these appeals.

8. We have heard learned counsel for the accused as well as learned counsel for the State. Learned counsel for the accused submitted that the conviction is based solely on the evidence of PW-5 Ram Chander Yadav, who claims that he had witnessed the incident. However, his evidence is doubtful. He is a chance witness. Besides, he is a disabled person. His claim that he held two accused and let them free when Kalu @ Amit showed him sword, cannot be accepted because he has only one hand. It was pointed out that PW-5 Ram Chander Yadav's name is not mentioned in the Daily Diary Register ("DDR"). His claim that he had taken the deceased to hospital is also doubtful because his name does not appear in the hospital record. He is not a witness to the inquest proceedings. If he had lifted the deceased, his clothes would have been stained with blood but that is not so. The Investigating Officer has stated that his clothes had no blood stains. He has stated that bandage was put on the deceased by the doctor, but the MLR indicates that there was no bandage on the deceased. Besides the story that the accused jumped over the wall and ran away is inherently improbable. Counsel submitted that PW-5 Ram Chander Yadav is, therefore, a highly unreliable witness, whose evidence ought to have been discarded. Counsel further submitted that the discovery evidence is also suspect. The accused allegedly made discovery statements. However, they retracted those statements and made fresh statements pursuant to which the weapons have allegedly been recovered. Counsel submitted that the discovery statements have been created by the police to suit the prosecution case. Counsel pointed out that PW-4 Karambir Yadav, who is stated to have lodged the FIR, has turned hostile. Therefore, there was no credible evidence before the court to convict the accused. In the circumstances, the order of conviction and sentence deserves to be set aside. Learned counsel for the State, on the other hand, supported the impugned judgment.

9. We find no infirmity in the judgment of the High Court which has rightly affirmed the trial court's view. It is true that the accused have managed to win over the complainant PW-4 Karambir Yadav, but the evidence of PW-5 Ram Chander Yadav bears out the prosecution case. It is well settled that conviction can be based on the evidence of a sole eye witness if his evidence inspires confidence. This witness has meticulously narrated the incident and supported the prosecution case. We find him to be a reliable witness. He is a student; there is no challenge to this. He wanted to get his certificates attested and, therefore, he had gone to Ahir College, where the incident took place on the morning of 7/4/1999. There is nothing unusual or surprising about his visit to Ahir College. It is wrong to describe him as a chance witness. Assuming PW-5 Ram Chander Yadav is a friend of the deceased, his testimony cannot be discarded on that ground, particularly when his evidence appears to be natural and credible. He is unlikely to implicate innocent persons in the murder of his friend. Because his name is not found in the DDR or in the hospital record and he was not a witness to the inquest proceedings, it cannot be concluded that he was not there at the place of incident or he did not take the deceased to the hospital. It is pertinent to note that his name appears in the FIR. Though the complainant has turned hostile, PW-8 SHO Raja Ram has spoken about recording of the FIR. Nothing has been brought on record to establish that PW-8 SHO Raja Ram harboured any grudge against the accused and he wanted to falsely implicate them. Finding of name of PW-5 Ram Chander Yadav in the FIR is of great significance.

10. It is the case of the defence that PW-5 Ram Chander Yadav has only one hand, therefore, his version that he held the two accused and released them after Kalu @ Amit showed him sword is false. PW-5 Ram Chander Yadav's left arm is upto elbow joint. Courage and strength are qualities which differ from person to person and one cannot discount the version of PW-5 Ram Chander Yadav on the basis of surmises. It appears to us that while the complainant, because of lack of courage resiled from his statement, PW- 5 Ram Chander Yadav has courageously stuck to it. This speaks volumes. It is argued that PW-5 Ram Chander Yadav has stated that his clothes were stained with blood, but PW-8 SHO Raja Ram has stated to the contrary. We do not attach much importance to this. The Investigating Officer ought to have seized PW-5 Ram Chander Yadav's clothes. Because he has failed to do so, obviously to cover up his inefficiency, he has come out with the story that there were no blood stains on the clothes of PW-5 Ram Chander Yadav. This court has repeatedly observed that the court must not get influenced by the remissness or inefficiency of the Investigating Agency and acquit the accused if the core of the prosecution case is undented and established. That will be putting a premium on inefficiency at the cost of cause of justice. We find that in the instant case, the core of the prosecution case or the substratum of the prosecution case has remained intact.

11. It was also urged that PW-5 Ram Chander Yadav has stated that a bandage was put on the deceased but the evidence does not bear out the statement. This is really a minor discrepancy, which does not affect the prosecution case. So far as discoveries made at the instance of the accused are concerned, it was argued that they are shrouded in suspicion because the earlier statements were retracted by the accused. This submission has no merit. The trial court as well as the High Court has rightly noted that the accused had tried to mislead the Investigating Agency by making false statements. No fault could be found with the discoveries. There is nothing unusual in the accused jumping over the wall and running away. They are young. They can easily cross over the wall by jumping.

12. We must note a very distressing feature of this case. During the trial, an attempt was made by the defence to prejudice the trial by filing an application on 5/8/1999 through Ram Singh father of PW-5 Ram Chander Yadav stating that PW-5 Ram Chander Yadav had not witnessed the incident; that his name was cited because he is a friend of the deceased and that the complainant had kidnapped him. The trial court has noted that immediately after the application was made, after the lunch break, PW-5 Ram Chander Yadav was asked whether he had deposed under the pressure of the police and the complainant and whether he was in the custody of the complainant for the last three days. PW-5 Ram Chander Yadav denied this story. The trial court and the High Court have rightly observed that this conduct of the accused completely exposed them. We concur with this observation. The accused made an unholy attempt to subvert the court proceedings. In the circumstances, we are of the view that the involvement of the accused in the offence of murder is rightly held to be proved.

13. While we are inclined to confirm the conviction and sentence of accused Joginder and Varun, the appeal of accused Kalu @ Amit requires different treatment. A contention was raised before this Court that accused-Kalu @ Amit was a juvenile at the time of the offence and he must be given the benefit of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short, 'the Juvenile Act'). In view of this, a direction was given to the District and Sessions Judge,

Rewari or some other Judicial Officer nominated by him to submit a report as to the age of the accused Kalu @ Amit. Accordingly, an inquiry was conducted by Mr. R.S. Chaudhary, Additional Sessions Judge, Rewari. The report of Mr. Chaudhary dated 12/11/2011 is forwarded to this Court by the District and Sessions Judge, Rewari. The report states that on the basis of the oral as well as documentary evidence, it is established that the date of birth of accused Kalu @ Amit is 14/10/1981 and at the time of the registration of FIR dated 7/4/1999 he was about 17 years, 5 months and 23 days'old. Thus, accused Kalu @ Amit was a juvenile when the offence was committed. We have no reason to disbelieve the report submitted by the Additional Sessions Judge, Rewari, which is based on oral as well as documentary evidence. Once it is held that accused Kalu @ Amit was a juvenile, when the offence was committed, the law must take its course and he must be given the benefit of the Juvenile Act.

14. Under Section 14 of the Juvenile Act, it is only the Juvenile Justice Board (for short, "the Board") which can conduct an inquiry as to whether a juvenile has committed the offence or not. Even if the Board comes to the conclusion that a juvenile has committed an offence, he cannot be sentenced and sent to a prison. Section 15 of the Juvenile Act states what order can be passed regarding a juvenile who has committed an offence. Under Section 15(g), the Board may direct the juvenile to be sent to a special home for a period of three years. Under the proviso, the Board may, for reasons to be recorded, reduce the period of stay to such period as it thinks fit. Section 16 forbids the court from sentencing a juvenile and committing him to prison. Proviso to Section 16 states that where a juvenile who has attained the age of 16 years has committed an offence and the Board is satisfied that the offence committed is so serious in nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other juvenile in a special home to send him to such special home and that none of the other measures provided under the Juvenile Act is suitable or sufficient, the Board may order such a juvenile to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government. Under sub-Section (2) of Section 16 on a report received from the Board under sub-Section (1), the State Government may order that such juvenile may be kept under protective custody at such place and on such conditions as it thinks fit. However, the period of detention shall not exceed in any case the maximum period provided under Section 15 i.e. the period of 3 years.

15. Section 17 says that no proceeding can be instituted and no order shall be passed against a juvenile under Chapter VIII of the Criminal Procedure Code. Section 18 forbids a joint trial of a juvenile and a person who is not a juvenile. Section 19 makes it clear that a juvenile who has committed an offence and has been dealt with under the provisions of the Juvenile Act shall not suffer disqualification, if any, attached to a conviction of an offence. Sub-Section (2) of Section 19 goes a step further. It states that in case of conviction, the Board shall make an order directing that the records of such conviction shall be removed after the expiry of the period of appeal or a reasonable period as prescribed under the rules, as the case may be.

16. Section 20 makes a special provision in respect of pending cases. It states that notwithstanding anything contained in the Juvenile Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which Juvenile Act comes into force in that area shall be continued in that court as if the Juvenile Act had not been passed and if the court finds that the juvenile has

committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of the Juvenile Act as if it had been satisfied on inquiry under the Juvenile Act that the juvenile has committed the offence. The Explanation to Section 20 makes it clear that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, the determination of juvenility of a juvenile would be in terms of clause (1) of Section 2, even if the juvenile ceased to be a juvenile on or before 1/4/2001, when the Juvenile Act came into force, and the provisions of the Juvenile Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed. As regards Explanation to Section 20 of the Juvenile Act, it would be appropriate to quote observations of this Court in Hari Ram v. State of Rajasthan & Anr. (2009) 13 SCC 211. The observations read thus:

39. The Explanation which was added in 2006, makes it very clear that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, the determination of juvenility of a juvenile would be in terms of clause

(1) of Section 2, even if the juvenile ceased to be a juvenile on or before 1/4/2001, when the Juvenile Justice Act, 2000 came into force, and the provisions of the Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed. In fact, Section 20 enables the court to consider and determine the juvenility of a person even after conviction by the regular court and also empowers the court, while maintaining the conviction, to set aside the sentence imposed and forward the case to the Juvenile Justice Board concerned for passing sentence in accordance with the provisions of the Juvenile Justice Act, 2000.”

17. It is clear, therefore, that the Juvenile Act is intended to protect the juvenile from the rigours of a trial by a criminal court. It prohibits sentencing of a juvenile and committing him to prison. As its preamble suggests it seeks to adopt a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation.

18. The instant offence took place on 7/4/1999. As we have already noted Kalu @ Amit was a juvenile on that date. He was convicted by the trial court on 7/9/2000. The Juvenile Act came into force on 1/4/2001. The appeal of Kalu @ Amit was decided by the High Court on 11/7/2006. Had the defence of juvenility been raised before the High Court and the fact that Kalu @ Amit was a juvenile at the time of commission of offence had come to light the High Court would have had to record its finding that Kalu @ Amit was guilty, confirm his conviction, set aside the sentence and forward the case to the Board and the Board would have passed any appropriate order permissible under Section 15 of the Juvenile Act (See Hari Ram). As noted above, the Board could have sent Kalu @ Amit to a Special Home for a maximum period of three years and under Section 19, it would have made an order directing that the relevant record of conviction be removed. Since on the date of offence, Kalu @ Amit was about 17 years, 5 months and 23 days of age, he could have been directed

to be kept in protective custody for 3 years under proviso to Section 16 as the offence is serious and he was above 16 years of age when the offence was committed. But he certainly could not have been sent to jail. Since, the plea of juvenility was not raised before the High Court, the High Court confirmed the sentence which it could not have done. None of the above courses can be adopted by us, at this stage, because Kalu @ Amit has already undergone more than 9 years of imprisonment. In the peculiar facts and circumstances of the case, therefore, we quash the order of the High Court to the extent it sentences accused Kalu @ Amit to suffer life imprisonment for offence under Section 302 read with Section 34 of the IPC. After receipt of report from Additional Sessions Judge, Rewari, vide order dated 14/12/2009, we had ordered that the Kalu @ Amit be released on bail. If he has availed of the bail order, his bail bond shall stand discharged. If he has not availed of the bail order, the prison authorities are directed to release him forthwith, unless he is required in some other case. Accused Kalu @ Amit shall not incur any disqualification because of this order. Criminal Appeal No.1467 of 2007 filed by the accused Kalu @ Amit is allowed to the above extent.

19. We dismiss Criminal Appeal No.868 of 2008 filed by accused Joginder and Varun Kumar.

.....J. (AFTAB ALAM)J. (RANJANA
PRAKASH DESAI) NEW DELHI, AUGUST 17, 2012.
