
Before Swatanter Kumar & S.S. Saron, JJ

MST. PARIMALLAM—*Appellant*

versus

STATE OF HARYANA—*Respondent*

CrI. Appeal No. 544/DB of 2000

6th February, 2003

Indian Penal Code, 1860—S. 302—Conviction of a tenant on the charge of causing death of her owner's infant daughter aged about six months—No contradiction or a material discrepancy in the statements of prosecution witnesses—Medical evidence also substantially supports the case of prosecution—Relations between the parties good—No reason to falsely implicate the accused—Motive—Prosecution failing to establish motive against the accused—Motive by itself not the sole criteria which would materially affect the recording of a finding of guilt against the accused—Prosecution case proved beyond any doubt—Conviction & sentence of accused liable to be upheld.

Held, that case of the prosecution to some extent is even admitted by the accused. The basic controversy revolves around the question as to how did Goldi die i.e. whether by falling in the water tub from the cot on which she was lying in the back court-yard as alleged by the accused or she was killed by drowning as stated by the prosecution. The test that has to be applied to either of these two situations are certainly different and distinct. Prosecution must prove its case beyond reasonable doubt while the defence can tilt the veracity of the prosecution case by proving the defence to be probable.

(Para 13)

Further held, that non-examination of the maid servant does not affect the prosecution case, when the investigating officer reached the place of occurrence, the maid servant may not be there. The others may not have been able to mention this fact due to the shock of death of a small child. The prosecution case is otherwise established from the statements of Shimoni Anand and Smt. Janki Devi, who have no reason to falsely implicate the accused. Therefore, in these circumstances

we are not able to find any merit in the contention raised and are not inclined to draw any adverse inference against the prosecution for non-examination of the maid servant by the prosecution.

(Para 17)

Further held, that another pertinent factor which the Court has to consider while testing the case as proved by either of the parties to the appeal is the motive. There is a mere reference that the accused was going to Sadhus and Saints after death of her twin daughters and finding the means so that she could be blessed with a child. There is no cogent and definite evidence to support this averment led by the prosecution. Possibly there could be a temptation for the accused to commit such a crime. But no such motive has been established on record. Motive by itself is not the sole criteria which would materially affect the recording of a finding of guilt against the accused by the Court. It is a relevant factor. Motive may lend support to the prosecution case significantly or to a limited extent. Establishment of motive alone is not sufficient to base a conviction.

(Para 18)

Further held, that relations between the parties were good and at no point of time right from the day they started living in the premises in question there was never a dispute muchless any animosity between the parties. Balancing the due test in the circumstances of the case and the evidence produced on record, it is difficult for the Court to presume false implication of the accused in this case.

(Para 19)

R. S. Cheema, Sr. Advocate with

M. J. S. Waraich, Advocate for the appellants.

G. P. S. Nagra, Advocate, for the respondent.

JUDGMENT

Swatanter Kumar, J

(1) Machinery of the investigating agency of the State was put into operation when Ms. Shimona Anand, daughter of Dr. Harish Anand, resident of House No. 23, Bank Colony, Karnal, submitted a

complaint dated 8th October, 1996 to the Incharge, Police Post, Civil Lines, Karnal. True translation of the ruqa containing the contents of the complaint which was Ex. PG on the record of the trial Court. Averments in the complaint read as under :—

“It is submitted that I am residing in House No. 23, Bank Colony, Karnal alongwith my parents. My father Dr. Harish Anand is an employee in the N.D.R.I. Karnal. My mother Mrs. Sobha Anand is working as a teacher in Saint Theresa’s Convent School, Karnal. The marriage of my brother Girish Anand was solemnised with Anju, resident of Chandigarh about 2 years ago. My brother was having a daughter aged about six months. My brother and Bhabhi (Brother’s wife) Anju both are employed at Karnal whereas I and my Nani (maternal grand mother) Smt. Janki Devi are living in the house. As usual my parents, brother and Bhabhi have to go and attend their respective jobs. Dr. Chinna Durai and his wife Dr. Parimallam have been living as tenants on the first floor of our house for the last about 1—1.5 years. Both husband and wife are employed in N.D.R.I., Karnal. Few months back, Dr. Chinna was blessed with two female children who are since, deceased. After the death of the daughters, Parimallam used to visit Sandhu-Sants (saints) so many times. Today at about 12.00 noon, our tenant Dr. Parimallam took Goldi, daughter of my brother to the upper portion of the house on the pretext of playing with her. After waiting for some time when Dr. Parimallam did not bring down my niece Goldy, I climbed up to the upper portion of the house occupied by Dr. Parimallam where I saw that Dr. Parimallam was standing by holding Goldi by her legs and had put her mouth into plastic bucket which was full of water in the bath room. Seeing this, I started making noise, whereupon Dr. Parimallam left child Goldi in the bucket and ran away. On hearing the noise, my maternal grand-mother Janki Devi came up-stairs and took out the child from the bucket and laid her on the cot with her face down-wards. Thereafter, I informed this incident to my parents, brother and

Bhabhi through telephonic message and after some time my parents reached the house. Immediately on their arrival, I alongwith my parents took Goldy to Govt. Hospital where the doctor declared her dead. The murder of my niece has been committed by Dr. Parimallam by drowning her into the bucket which was full of water. You are requested to take legal action against Parimallam.”

(2) On the basis of the above, FIR No. 950 Ex. PG/3 was registered at 3.50 P.M. on 8th October, 1996 at Police Station, City Karnal, District Karnal, under section 302 of Indian Penal Code (hereinafter referred to as the Code). Ex. PG/1 was the endorsement of the police proceedings on ruqa sent by the police post to Police Station. SI Raj Kumar, Incharge, Police Post, Civil Lines, proceeded with the investigation/enquiry and went to General Hospital, Karnal.

(3) Dr. Sunil Kumar Midha, Medical Officer, Civil Hospital, who appeared as PW. 1., examined the six months old infant baby girl. She was declared dead and body of the dead child was subjected to post mortem on the application Ex. PA of the police by the Board of Doctors. According to the report of the Medical Board Rigor Mortis was present in all the four limbs. Blood tinged forthy secretion were coming out from the nose. Post Mortem staining was present in the dependent parts. Mucosa of larynx and trachea were congested and contained forthy secretions. Both the lungs were distended and Oedematous and cut section showed frothy blood stained fluid. Heart was healthy and contained blood on the right side. Stomach was healthy and contained about 50 cc wateryfluid. Liver, spleen and kidneys were congested. All other organs were healthy. The cause of death declared by the Medical Board was as under :—

“The cause of death in this case in our opinion was asphyxia due to drowning which was ante-mortem in nature and sufficient to cause death in ordinary course of life.”

The time that elapsed between injury and death was within few minutes and between death and postmortem was within 36 hours. Ex. PB is the carbon copy of the Post Mortem. The investigating officer prepared inquest report Ex. PL. Besides,—*vide* possession memo. Ex. PH he took into possession the plastic bucket Ex. P.1 and

after completing the investigation and recording statements of the witnesses under section 161 Cr. P.C. The challan was put up in Court. The reports of the Forensic Science Laboratory are Ex. DX and Ex. DX/1.

(4) Two accused namely Dr. Smt. Parimallam as well as her husband Dr. Chinna Durai were committed by the learned Magistrate to the Court of Sessions to stand trial for an offence under section 302 of the Code. Charge to the following effect against both the accused was framed by the learned trial Court,—*vide* its order dated 11th March, 1997 :—

“I, N.K. Jain, Sessions Judge, Karnal, do hereby charge you Parimallam as under :—

On 8th October, 1996, in the area of City Karnal, police station, City Karnal, you Dr. Parimallam, wife of Chinnadurai, did commit murder by intentionally causing the death of Goldi, daughter of Girish Anand and thereby committed an offence punishable under section 302 of Indian Penal Code and within my cognizance.

On the same date, and place, you Dr. Chinnadurai, in furtherance of your common intention with your wife Dr. Parimallam, did commit murder by causing death of Goldi, daughter of Girish Anand and thereby committed an offence punishable under section 302 read with Section 34 of Indian Penal Code, and within my cognizance.

OR in the alternative you both Dr. Parimallam and Dr. Chinnadurai, on the same date, time and place conspired to commit murder of Goldi and in furtherance of Conspiracy/agreement, you Parimallam committed murder of Goldi, daughter of Girish Anand and thereby committed an offence punishable under section 120-B of Indian Penal Code and within my cognizance.

And I hereby direct you to be tried by this court on above charge.”

(5) To prove the above charge, the prosecution examined as many as 10 witnesses were examined and various documents were produced on record. On 4th January, 1999 the Public Prosecutor made a statement, "I conclude the evidence of the prosecution". Statement of accused Parimallam was recorded under section 313 Cr. P.C. on 11th January, 1999. However, recording of the statement of the other accused Dr. Chinna Durai was deferred by the learned trial Court. Arguments were heard on the very next day and,—*vide* order dated 12th January, 1999, the Court acquitted Dr. Chinnadurai of the charge framed against him. The relevant part of the said order reads as under :—

"Statement of accused Parimallam under section 313 Cr. P.C. has been recorded in which she denied the allegations against her. Today the case was fixed for further proceedings on the question of recording statement of accused Chinnadurai under section 313 Cr. P.C. From resume of the evidence led by the prosecution noticed above it is clear that there is not an iota of incriminating evidence on the file against Chinnadurai accused to connect him with the offence charged so the recording of his statement under section 313 of the Code of Criminal Procedure is dispensed with. There being no incriminating evidence against this accused, Chinnadurai accused is acquitted of the charge framed against him. The accused Chinnadurai is in custody. He shall be released if not wanted in any other case.

After taking evidence for the prosecution, examining the accused Parimallam and hearing the prosecution and the defence on the point. I am of the opinion that it is not a case where she be acquitted under section 232 of the code of Criminal Procedure. Hence I call upon her to enter on her defence and adduce any evidence she may have in support thereof. For that matter the proceedings are adjourned to 1st February, 1999."

(6) In her statement under section 313 Cr. P.C. accused Parimallam had stated that she had not committed the crime and that the true facts were :—

"That, I never committed the murder of Goldi, now deceased. On the day of alleged occurrence, I had come to my

house for changing my clothes because of my gynaecological problem. As soon as I reached there I noticed that a tub full of water was lying near the cot in the back court Yard of the house. Goldi, who was quite healthy and was in a position to move right and left and was also in the process of learning sitting, fell down in the tub full of water. Because the cot was of a folding with pipe arms. At that time maternal grand mother of Goldi was working inside the room and maid servant was washing the clothes. The child Goldi had fallen down from the cot inside the plastic tub full of water lying near the cot. The child had almost drowned when I arrived there. Immediately, thereafter I raised noise and picked up the child from the tub in order to save her. Maternal grand mother of the child also reached there after hearing my alarm and thereafter both of us tried to save the child by rubbing her back and also turning her downward so that the water may come out, but all in vain.

Shimona PW was not present on that day. Thereafter the family members of the deceased started blaming me and then I left the house for informing my husband, who was in the office at that time. Later on, I came to know that the complainant party in connivance with the local police got a false case registered against me and my husband giving the incident a colour of a murder, although it was an accidental fall of the child in the water. I am innocent. She also examined her husband Dr. Chinna Durai as DW 1 and closed the defence evidence.

(7) The learned Sessions Judge after appreciating the entire evidence on record found the accused Smt. Parimallam guilty of an offence under section 302 of the Code. After hearing her on the question of quantum of sentence and keeping in mind the statement of the accused that she had a minor female baby aged about three years with her and had prayed for lenient view being taken in the

matter of sentence. sentenced her to undergo imprisonment for life and to pay a fine of Rs. 15,000 for the offence under Section 302. In default of payment of fine to further undergo rigorous imprisonment for a period of one year. Besides, it was also directed that if the fine is recovered a sum of Rs. 10,000 should be paid to the parents of the child. This has resulted in the present appeal being filed by the accused against the judgment of conviction and sentence both dated 21st September, 2000.

(8) Learned counsel appearing for the accused opened his arguments by submitting that few facts of the prosecution case are not in dispute. Such undisputed facts can be taken from the case of the prosecution and statement of the accused under Section 313 Cr. P.C. The parties were known to each other. Accused and her husband were tenants on the first floor of the same premises of which the complainant party was owner in possession of the ground floor. The birth of the child Goldi is not in dispute as also the fact that the accused also have known the said child.

(9) The basic and preliminary question which requires a precise answer is, what actually happened on 8th October, 1996 ? The accused has not disputed that she went to the house at the time of occurrence. However, her case is that on arriving there in the back court-yard she noticed that Goldi had fallen in the tub where the servant was washing clothes. The child Goldi fell from the cot in the plastic tub full of water lying near the cot. The child had almost drowned when she reached there. Thereafter she picked up the child from the tub in order to save her. In the meanwhile grand-mother of the child reached there on the alarm of the accused and both started rubbing the back of the child so that the water could come out, but to no avail. Ms. Shimona Anand PW-7 was not present at the house on that date. She claims her false implication.

(10) The case of the prosecution is also somewhat similar except to the extent that according to Shimoni Anand PW 7 and Smt. Janki Devi PW 8 both alleged eye witnesses, the accused had come from the office and had taken the child to the first floor of the house where she killed the child after drowning her in the bucket full of water. The act of the accused Parimallam holding Goldi by her legs with face downwards submerged in the water bucket was witnessed

by Smt. Shimoni Anand PW 7 and Smt. Janki Devi PW 8 joined later, but the accused went away in the meanwhile. The accused and her husband both were apprehended by the police much later.

(11) The learned counsel for the accused *inter-alia* contended that there are serious loop-holes in the case of the prosecution and patently the version of the prosecution is unreliable and is a padded up story. According to him Ms. Shimona Anand PW 7 was studying at Chandigarh and was not at the place of occurrence on the fateful day. She had been introduced subsequently taking advantage of the delay between the time of occurrence and registration of the case. The maid servant who was present there at the site had not been examined and in fact has been intentionally kept back by the prosecution. Nobody from the neighbourhood came despite the fact that Ms. Shimona Anand PW 7 claims to have raised alarm.

(12) Another pertinent fact highlighted by the counsel is that both the witnesses i.e. Ms. Shimoni Anand PW 7 as well as the investigating officer have categorically stated that "the bucket was full of water". This is impossible as according to the prosecution, the child was killed by drowning in the bucket full of water and as such the water is bound to get displaced and even flow on the floor and the bucket cannot remain full. Lastly he contended that the prosecution cannot derive any advantage out of the so called extra judicial confession allegedly made by the husband of the accused to Dr. N. Balaraman PW 5 and Ved Parkash PW 6 against the accused. On these premises it is submitted that the prosecution has failed to prove its case beyond any reasonable doubt.

(13) We have already noticed above that case of the prosecution to some extent is even admitted by the accused. The basic controversy revolves around the question as to how did Goldi die i.e. whether by falling in the water tub from the cot on which she was lying in the back court-yard as alleged by the accused or she was killed by drowning as stated by the prosecution particularly Ms. Shimoni Anand PW 7 and Smt. Janki Devi PW 8. The test that has to be applied to either of these two situations are certainly different and distinct. Prosecution must prove its case beyond reasonable doubt while the defence can tilt the veracity of the prosecution case by proving the defence to be probable.

(14) The presence of Ms Shimoni Anand PW 7 can hardly be doubted as she has categorically stated in her cross-examination that she had the permission in writing from the hostel warden of the college where she was studying in Chandigarh. The deceased child was her niece (brother's daughter). She also fairly admitted that there were normal relations with the accused persons and even on occasions they used to have dinner together. According to her accused had lost her twin daughters and thereafter she was going to Sadhus and Saints so that she could be blessed with a child and she had committed the murder of Goldi. She is an eye witness to the occurrence. All suggestions put to her were categorically denied by her. When she raised the alarm, her grand mother Janki Devi PW 8 had also come up-stairs where Parimallam had killed the child. Her grand mother put the child with face downwards so that water could come out from her stomach. This version was fully supported by PW 8 Janki Devi who was her maternal grand mother. The cross-examination of Shimoni Anand PW 7 and Smt. Janki Devi PW 8 is more or less common. Nothing substantial has been brought in their cross-examination which could demolish the prosecution story. Certain improvements are pointed out in their statements, but those improvements are very minor and in no way affect the case of the prosecution. The bucket in which Goldi was drowned and killed was taken into possession by the investigating officer as Ex. P.1.

(15) It was asserted by the counsel that the expression, "bucket full of water" completely falsifies the case of the prosecution. We are not quite impressed by this contention. This is a way of expression and does not literally mean that the bucket was full to the brim. Displacement of water from the bucket in which the child was drowned would be not so much as to be distinctively noticed because the child weighed about two kilograms plus. Definitely some water must have fallen out but the extent thereof may not be so significant as to be stated by the witnesses that the bucket was half full. This, to us, appears to be a way of expression rather than defining the exact quantity of water in the bucket. The statement of the witness must be understood as would be spoken and understood in common parlance.

(16) According to Shimoni Anand PW 7 the maid servant Kiran had arrived between 12.00/1.00 P.M. as she had no fixed time. However, Smt. Janki Devi PW 8 stated that, "our maid servant was

inside the house. I do not remember at what time our maid servant had come on that day. My son-in-law had reached the house at about 12.45 P.M." This discrepancy or contradiction in the statements of the two witnesses was again highlighted by the learned counsel for the appellants as to be a material contradiction. In our view this is not a contradiction or a material discrepancy. Both Shimoni Anand PW 7 and Smt. Janaki Devi PW 8 have not stated anywhere in their statements recorded under Section 161 Cr. P.C. or before the Court that at the time of occurrence, the maid servant was present and she had witnessed the crime. We do not consider it to be such a circumstance so as to draw any adverse inference either for non-production of said maid servant before the Court or to doubt the statements of PW 7 and PW 8. As per the medical evidence Goldi died because of Asphyxia and this medical evidence substantially supports the case of the prosecution.

(17) The investigating officer of the case Raj Kumar, Sub Inspector appeared in the witness box as PW 10. He referred to the entire evidence on record. In his examination-in-chief itself he stated that a bucket full of water was lying in the bath room of the upper portion of the house and after throwing the water, he took into possession the said bucket,—*vide* memo Ex. PH. Another pertinent fact which came on the record as a result of cross-examination of this witness is, "I kept on searching for the accused till 23rd October, 1996 and on 23rd October, 1996 a Fax Message was received by S.P. Karnal, to the effect that the two accused have surrendered before Metropolitan Magistrate at Chinnai on that day." He had also prepared site plan Ex. PN/2. A suggestion was put to this witness in his cross-examination that the maid servant was present in the house and he had purposefully not joined her in investigation. This suggestion was denied. In her statement under Section 313 Cr. P.C. the accused had stated that on her arrival the maid servant was washing clothes. The defence was aware that the maid servant was neither named as a witness nor was examined during the entire trial. Further it was also known to the that according to the case of the defence, she had witnessed the entire incident which could support the version of the defence. No effort was made to summon her while defence was admittedly led by the accused. Even otherwise we are of the view that non-examination of the maid servant does not effect the prosecution case, when the investigating officer reached the place of occurrence,

the maid servant may not be there. The others may not have been able to mention this fact due to the shock of death of a small child. The prosecution case is otherwise established from the statements of PW.7 and PW.8, who have no reason to falsely implicate the accused. Therefore, in these circumstances we are not able to find any merit in the contention raised and are not inclined to draw any adverse inference against the prosecution for the non-examination of the maid servant by the prosecution.

(18) Another pertinent factor which the Court has to consider while testing the case as proved by either of the parties to the present appeal is the motive. There is a mere reference that the accused was going to Sadhus and Saints after death of her twin daughters and finding the means so that she could be blessed with a child. There is no cogent and definite evidence, to support this averment of PW 7 led by the prosecution. Possibly there could be a temptation for the accused to commit such a crime. But no such motive has been established on record. Motive by itself is not the sole criteria which would materially affect the recording of a finding of guilt against the accused by the Court. It is a relevant factor. Motive may lend support to the prosecution case significantly or to a limited extent. Establishment of motive alone is not sufficient to base a conviction. Reference may be made to the judgment of the Hon'ble Apex Court in the case of *Subimal Sarkar* versus *Sachindra Nath Mandal and others*, (1).

(19) The other aspect of this very concept is the intention of the complainant party in falsely implicating the accused. It is an admitted case that relations between the parties were good and at no point of time right from the day they started living in the premises in question there was never a dispute much less any animosity between the parties. The question, why would the complainant falsely implicated the accused would remain to be answered by imagination as even the accused does not render any explanation or suggestion in this regard. Balancing this dual test in the circumstances of the case and the evidence produced on record it is difficult for the Court to presume false implication of the accused in this case.

(20) Motive is not an essential pre-requisite of a criminal act. It cannot be universally stated that without a motive no criminal

(1) JT 2003(1) SC 72

offence would have been committed. Even if the prosecution is not able to prove motive or a strong motive for commission of the crime, this would not prove fatal to its case. We can usefully refer to the judgment of the Hon'ble Apex Court in the case of **State of Himachal Pradesh** versus **Jeet Singh, (2)** where the Court held as under :—

“No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim the inability to further put on record the manner in which such ire would have swelled up on the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended. In this context we may extract the observations made by a two Judge Bench of this Court (Dr. A.S. Anand, J.—as the learned Chief Justice then was and Thomas, J.) in **Nathuni Yadav** versus **State of Bihar, 1978(9) SCC 238** :

“Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impels a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murders have been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain undiscoverable. Lord Chief Justice Champbell struck a note of caution in **R.V. Palmer** (Shorthand Report at p.308 CCC MAU 1856) thus :

“But is there be any motive which can be assigned, I am bound to tell you that the adequacy of that motive is of little importance. We know, from experience of

criminal courts that atrocious crimes of this sort have been committed from very slight motives ; not merely from malice and revenge, but to gain a small pecuniary advantage, and to drive off for a time pressing difficulties.”

“Though, it is a sound proposition that every criminal act is done with a motive, it is unsound to suggest that no such criminal act can be presumed unless motive is proved. After all, motive is a psychological phenomenon. Mere fact that prosecution failed to translate that mental disposition of the accused into evidence does not mean that no such mental condition existed in the mind of the assailant.

Reference can also be made to a recent judgment of the Supreme Court in the case of *State of U.P. versus Babu Ram (3)*, where the Court held as under :—

“There is no legal warrant for making such a hiatus in criminal case as for the motive for committing the crime. Motive is a relevant factor in all criminal cases whether based on the testimony of eye witnesses or circumstantial evidence. The question in this regard is whether a prosecution must fail because it failed to prove the motive or even whether inability to prove motive would weaken the prosecution to any perceptible limit. No doubt, if the prosecution proves the existence of a motive it would be well and good for it, particularly in a case depending on circumstantial evidence, for, such motive could then be counted as one of the circumstances. However, it cannot be forgotten that it is generally a difficult area for any prosecution to bring on record what was in the mind of the respondent. Even if the Investigating Officer would have succeeded in knowing it through interrogations that cannot be put in evidence by them due to the ban imposed by law.”

Thus, applying the above principles to the facts of the present case, the prosecution has not been able to show on record by cogent evidence that there was any strong motive on the part of the accused to commit the crime. Still it would remain a relevant fact as it emerges from the above circumstances.

(21) It is true that the prosecution cannot derive much benefit from the fact that the husband of the accused Dr. Chinnadurai had made a confessional statement to two different persons, namely, Dr. N. Balaraman PW 5 and Ved Parkash, PA to Director, Karnal PW. 6. These extra judicial confessions were made by Dr. Chinnadurai who was an accused but was acquitted by the order of the learned trial Court dated 12th Janaury, 1999. The said order has been accepted by the State as it was not challenged by the State at any time. That order has attained finality. The extra judicial confession made by co-accused who has subsequently been acquitted during the course of the trial would be of no consequence and cannot be attached that evideniary value against the present accused. In fact the said statements to a great extent would be inadmissible against the present accused.

(22) Dr. N. Balarman was examined as PW 5. He stated that he was head of the Dairy Cattle Nutrition of N.D.R.I. and that Dr. Parimallam had visited him and she was very disturbed about the death of her two children. He further stated that Dr. Chinnadurai accused present in Court had told him, at his residence, that his wife had killed the child of the house-owner by putting the child in a bucket of water. He further stated that he had asked them to go to the Director and surrender to the police. PW 6 Ved Parkash is Personal Assistant to the Director, N.D.R.I. Karnal. According to him the husband of the accused had come to him and stated that his wife had committed a mistake by committing murder of grand-daughter of Harish Chander and he wanted to see the Director. The Director was busy and he identified his signatures on Ex. PF i.e. the letter written by him to the incharge, Police Post, Civil Lines, Karnal. These statements of PW.5 and PW.6 show that the husband of the accused made a confessional statement to these witnesses that his wife had by mistake committed a murder. However, those confessions cannot be used against the present accused. We may refer to the judgment of the Hon'ble

Supreme Court in the case of **Suresh Budharmal Kalani alias Pappu Kalani** versus **State of Maharashtra (4)** where the Hon'ble Apex Court commenting upon admissibility of a confessional statement under Section 30 of the Evidence Act held as under :—

“Thus said, we may turn our attention to the confession made by Dr. Bansal and Jayawant Suryarao. Under Section 30 of the Evidence Act a confession of an accused is relevant and admissible against a co-accused if both are jointly facing trial for the same offence. Since, admittedly, Dr. Bansal has been discharged from the case and would not be facing trial with Kalani, his confession cannot be used against Kalani.”

(23) It will also be appropriate to refer to the basic judgment of the Hon'ble Apex Court in the case of **Kashmira Singh versus State of Madhya Pradesh, (5)** where the Court held as under :—

“The proper way to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, it believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept.”

(24) At the time of arguments before the learned trial court Dr. Chinnadurai was not an accused before it. His testimony is not that of an accomplice in the case. He appeared as DW 1 and supported the version put forward by his wife under section 313 Cr. P.C. He

(4) AIR 1998 SC 3258

(5) AIR 1952 SC 159

stated that he never visited Dr. N. Balaraman PW.5 and also denied other suggestions put to him in cross-examination. However, he stated that on the date of occurrence his wife i.e. the accused came to his office and informed him of the incident. Thereafter, he and his wife came to Dr. Anand's house to enquire about the incident. At that time all neighbours had gathered there and police had also reached. The family members of deceased Goldi started abusing him and his wife. Thereafter, they came back their office and apprehending that they may be implicated in some case, they approached some known persons. Their Director was not available because he was to attend Nigerian personalities.

(25) In the light of the above enunciated law, the statements made by the husband of the accused to PW 5 and PW 6 cannot be treated as confessions of the accused nor would they be admissible as being statements of a co-accused. However, there are attendant circumstances which sufficiently support the case of the prosecution. Dr. N. Balarman PW 5 is Head of the Department in the N.D.R.I. while Ved Parkash PW 6 is Personal Assistant to the Director of N.D.R.I. Thus, it is not possible for the Court to entirely brush aside these statements and not even notice them as a corroborative factor to the case of the prosecution particularly when they would have no motive to falsely depose before the Court or to falsely implicate their own colleague.

(26) We are of the considered view that on the strength of the two eye witnesses, corroborated by the medical evidence and other attendant circumstances and also the fact that some parts of the prosecution case are admitted and the statement of the accused and even her husband as DW 1 fall in line with the prosecution case, we have no hesitation in holding that the prosecution has been able to prove its case beyond any reasonable doubt.

(27) Resultantly, we affirm the judgment of the trial Court on conviction and sentence and dismiss this appeal preferred by the accused-appellant.