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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.L.P. 213/2014

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Judgment dated 19.02.2015

STATE

..... Petitioner

Through : Mr.Feroz Khan Ghazi, APP for the State
along with SI Satish Kumar, P.S. Ali
Pur.

versus

SALIM KHAN & ORS

..... Respondents

Through : Ms.Nandita Rao, Adv. for respondent
no.1.
Mr.Javed Alvi, Adv. for respondent
no.2, Rajender Singh.
Mr.Karan Sachchar and Mr.Tushar
Sharma, Adv. for respondents no.3
and 4.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

CRL.M.A.NOS.4181/2014 & 4182/2014

1. CRL.M.A.No.4181/2014 has been filed by the appellant/State seeking condonation of 33 days' delay in filing the present appeal and CRL.M.A.No.4182/2014 has been filed seeking condonation of 6 days' delay in re-filing the present appeal.
2. Learned counsel for the respondents submit that they have no objection if the present applications are allowed and delay is condoned.

3. Heard and for the reasons stated in the present applications, the same are allowed. Delay in filing and re-filing the present appeal is condoned. Let the appeal be taken on record.
4. Applications stand disposed of.

CRL.L.P. 213/2014

5. The present leave to appeal arises out of a judgment dated 17.8.2013 passed by learned Additional Sessions Judge-1, North, Rohini, Delhi, in Sessions Case No.866/2006, whereby the respondents stand acquitted for the offence punishable under Sections 363/364A/302/201/203120B of the Indian Penal Code.
6. The case of the prosecution, as noticed by the learned trial Court is that five year old child of Sube Singh went missing on 3.12.2003. The first ransom call was received by Sube Singh on 15.12.2003 whereby the caller demanded Rs.30.00 lakhs for release of his son. Another call was received by Sube Singh on 17.12.2013 whereby he was asked to come with ransom amount at Madak More, Jattari, PS Tappad, Aligarh, U.P. Although separate Police teams were constituted and fake bundles of currency notes were procured yet despite reaching the place, none was present to receive the amount. On 24.1.2004, elder brother of Sube Singh informed him that he had spoken to one of the kidnappers on 23.1.2004 and he had asked him to come on 29.1.2004 at about 6.30 p.m. near Hasayan More, Ratti Ka Nala, Hathras Road, however, the kidnappers did not show up.
7. On 8.2.2006 investigation was assigned to Inspector P.C. Jha, who recorded the supplementary statement of wife of Sube Singh. On 26.2.2006 one public witness Shatrughan had stated that respondent no.2, Rajender Singh, had confessed before him for committing the offence and one Pratap Singh also made a statement that respondent

no.1, Salim Khan, had confessed before him that they had kidnapped the child, Master Virat, and they had given the child to one relative, but since the ransom money was not received, the relative, to whom the child had been entrusted, did not return the child and since the child recognised Salim Khan, the child was drawned in the Gangnehar.

8. The prosecution has examined 29 witnesses. Statements of the respondents were recorded under Section 313 of the Code of Criminal Procedure and they have denied all the incriminating evidence put to them.
9. Learned APP for the State submits that the trial Court has passed the order of acquittal based on the presumption, conjectures, surmises and without taking into account the evidence surfaced during the course of trial. Learned APP further submits that the learned trial Court has ignored the vital piece of evidence and has erred in not appreciating the testimony of PW-4, Sh.Pratap, who had testified that respondent no.2, Rajender Singh, had made an extra-judicial confession before him and PW-15, Col. (Retd.) Basant Kumar. Learned APP contends that the trial Court has failed to take into account that the locket of the child, Master Virat, was recovered at the instance of respondent no.1, Salim Khan and further the complainant, Sube Singh, had identified the school bag, which was recovered at the instance of respondent no.2, Rajender Singh.
10. Learned counsel appearing on behalf of the respondents submits that there is not a single piece of evidence, which would link the accused persons (respondents herein) to the crime. It is further submitted that the gold chain and the school bag have been planted inasmuch that the respondents would not keep the same for a period of almost three years from the date of the incident. Even otherwise, it is submitted that neither in the complaint made to the Police nor in the hue and cry notice there

was any reference to the gold chain or the school bag. It is also contended that an extra-judicial confession is a weak form of evidence and cannot be relied upon.

11. We have heard learned APP for the State and counsel for the respondents, and also carefully examined the evidence and the judgment passed by learned trial Court. In order to prove the guilt of the respondents the prosecution had relied upon the following circumstances as noticed by the trial Court.

“36. The prosecution has relied upon following circumstances to prove the guilt of the accused persons:-

- (a) That child Virat went missing on 02.12.2003.
- (b) Testimony of PW5 Randhawa and PW11 Subey Singh, which proved that ransom of Rs.30 lakhs was made on phone from different places even in lieu of released of child.
- (c) The extra judicial confession made by accused Rajender Singh before PW Satrugan and disclosing of said confessional statement by PW Satrugan to PW Pratap.
- (d) The extra judicial confession made by accused Salim Khan to PW Kalu confessing his crime of kidnapping of child Virat in conspiracy with accused Mojib (PO), Rajender Singh and Sandeep.
- (e) Confessional statement of accused persons Salim Khan and Sandeep and further recovery of articles belonging to child Virat in pursuance of their respective disclosure statement.
- (f) The testimony of PW13 regarding dropping of victim child by accused Sandeep to him.

- (g) The pointing out memo of place from where accused Niranjn Singh and Sandeep made ransom calls.”

12. The arguments of learned counsel for the State can be summarised as under:

- (i) That the trial court has erred in not relying on the extra-judicial confessions made by respondents herein;
- (ii) That the trial court has failed to take into account that locket of the child, Master Virat, was recovered at the instance of Salim Khan, respondent no.1, from beneath the floor of his house and further the school bag was recovered at the instance of Rajender Singh, respondent no.2, from an iron almirah, which was kept in the South-East direction in his room. Both these articles were duly identified.

13. The present case is based on circumstantial evidence. It is settled law that the circumstances, from which an inference as to the guilt of the accused is to be drawn, have to be proved beyond reasonable doubt.

14. Law with regard to the conviction on the basis of circumstantial evidence has been discussed in detail by the Supreme Court in the case of Harishchandra Ladaku Thange Vs. State of Maharashtra, reported at AIR 2007 Supreme Court 2957. It would be useful to reproduce the relevant paras:-

8. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See *Hukam Singh V. State*

of Rajasthan (AIR 1977 SC 1063), *Eradu V. State of Hyderabad* (AIR 1956 SC 31), *Earaohadrappa V. State of Karnataka* (AIR 1983 SC 446), *State of U.P. V. Sukhbasi & Ors.* (AIR 1985 SC 1224), *Balwinder Singh alias Dalbir Singh V. State of Punjab* (AIR 1987 SC 350) and *Ashok Kumar Chaterjee V. State of M.P.* (AIR 1989 SC 1890)). The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In *Bhagat Ram V. State of Punjab* (AIR 1954 SC 621) it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.

[Also see 1996 (10) SCC 193; AIR 1990 SC 79; (1992 CrL LJ 1104); AIR 1952 SC 343; AIR 1984 SC 1622; and *AIR 1991 Supreme Court* 1674:

15. The trial Court has rightly analysed the extra-judicial confessions, sought to be relied upon by the prosecution, and also rightly reached upon a conclusion that it would be highly unsafe to convict the respondents based on extra-judicial confession, which is sought to be relied upon by the prosecution.
16. We may notice that respondent no.1, Salim Khan, was a juice seller and the alleged confession is sought to be made by him to one of his customers, who happens to be the cousin of Subey Singh. The second extra-judicial confession is made by Rajender Singh to one, Shatrughan, PW-16, (public witness) who happens to be a rank outsider.
17. It has been repeatedly held that although an order of conviction can be passed based on extra-judicial confession but the Court must be extremely cautious and careful before relying on extra-judicial

confession.

18. Although the prosecution has been able to establish that Master Virat, Son of Sube Singh, was kidnapped and initially ransom call was received by his father and thereafter by his uncle, as per the prosecution respondent no.2 Rajender Singh had made an extra judicial confession before PW-16, Shatrughan, and Salim Khan had made an extra judicial confession before Kalu Ram, PW-19. Before the credibility of these extra-judicial confessions can be considered, we deem it appropriate to revisit the law.
19. In a recent decision rendered by the Supreme Court of India in the case of *Baskaran And Another v. State of Tamil Nadu*, reported at (2014) 5 SCC 765, it has been held that if the extra-judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can also solely form the basis of conviction. Relevant portion reads as under:

“17. It is no doubt true that this Court time and again has held that an extra-judicial confession can be relied upon only if the same is voluntary and true and made in a fit state of mind. The value of the evidence as to the confession like any other evidence depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. But it is not open to any court to start with the presumption that extra-judicial confession is insufficient to convict the accused even though it is supported by the other circumstantial evidence and corroborated by independent witness which is the position in the instant case. The Courts cannot be unmindful of the legal position that even if the evidence relating to extra-judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can solely form the basis of conviction.”

20. It would also be useful to refer to the observations made by the Supreme Court of India in the case of *Rahim Beg v. State of U.P.*, reported at (1972) 3 SCC 759, wherein it has been held as under:

“There was no history of previous association between the witness and the two accused as may justify the inference that the accused could repose confidence in him. In the circumstances, it seems highly improbable that the two accused would go to Mohammad Nasim Khan and blurt out a confession.”

21. The law with regard to extra-judicial confession was discussed in detail by the Supreme Court in the case of *Sahadevan and Another v. State of Tamil Nadu*, reported at (2012) 6 SCC 403, wherein it has been held as under:

“14. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.”

22. Upon analysis of the aforesaid judgments, the following principles can be culled out:

- (i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

- (ii) It should be made voluntarily and should be truthful.
- (iii) It should inspire confidence.
- (iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.
- (v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.
- (iv) Such statement essentially has to be proved like any other fact and in accordance with law.”

23. Keeping the aforesaid principles in mind, we have examined the two extra-judicial confessions, which are heavily relied upon by the State. As per the testimony of PW-28, PW-16, Shatrughan came to the Police Station and his statement under Section 161 of the Code of Criminal Procedure was recorded. As per this statement of Shatrughan, respondent no.2, Rajender Singh, had met him and told him that about two and a half years ago he along with two other persons had kidnapped a child and handed him over to one relative, but despite efforts for 4-5 months they could not get the money and the child was thereafter handed back to Salim Khan and since the child recognised Salim Khan, the child was drowned in the gang nehar.
24. PW-16, Shatrughan did not support the case of the prosecution and denied that any confessional statement had been made before him by respondent no.2, Rajender Singh, despite the fact that he was cross-examined at length. The observations made by the learned trial court read as under:

“51. As far as accused Salim Khan is concerned as per the prosecution case, he made confessional statement before PW-19 Kalu Ram. PW-19 Kalu Ram had testified that he used to take

juice from the Salim Khan Juice Corner and Salim Khan was running said shop in his village for the last about 19 years. One evening he went to the juice shop to take the juice, he noticed that Salim was looking very sad and on his asking what has happened he told that, some wrong has been committed by him. He further told that, one Mojib (PO) was doing white washing in the house of Sube Singh and he had also carried white whash in the house of Sube Singh and Mojib (PO) heard the conversation on Subey Singh that huge cash amount is always retained by him. Thereafter met him and he (Mojib) told they can get huge amount if they kidnapped the son of Subey Singh. Thereafter, he (Salim Khan) met accused Rajender and told him that they could plan to kidnap the son of Sube Singh.

PW-19 further testified that Kobib (PO) lifted/kidnapped the said boy i.e. son of Sube Singh from Mangal Bazar and handed over the said boy to him and he handed over the said to Rajender and Rajender handed over the boy to his brother in law (sala) accused Sandeep. PW19 Kalu Ram further testified that accused Salim Khan further confessed that, when they did not receive any ransom amount for about 5/6 months, accused Sandeep called Rajender Singh and handed over the kidnapped boy and he and Rajender Singh brought back the kidnapped child and on the way Rajender Singh left the kidnapped boy to take some eatables. When he asked from the said kidnapped boy that, he knew him, the kidnapped boy told him that, he knew him and told that, "*aap to juice wale uncle ho*". Thereafter, he (Salim Khan) further confessed that, he will come in the net of the police, as the boy may tell the police his name and identity, therefore, fearing the result of implication in this case, he had drown the kidnapped child in the Gang nehar.

25. As far as the testimony of PW-19, Kalu Ram, is concerned the trial court has rightly considered the fact that a person would only make a confession before a person in whom he could repose faith; a person, whom he could trust; to a friend, to a neighbour with whom he would have good relations.
26. In this case, Kalu Ram was only a customer of Salim Khan and they

share no prior relationship, which would show that there was some element of comfort between Salim Khan and Kalu Ram and in case they were known to each other Salim Khan would also know that Kalu Ram was the cousin of Sube Singh, father of the kidnapped child, and, thus, it would be highly improbable that Salim Khan would confess before Kalu Ram.

27. Another factor is that according to the prosecution Salim Khan and Rajender confessed on the same day. Another improbable factor as to why both the respondents would confess before two different persons on one day and that too after a gap of two years.
28. The trial court has also considered some of the contractions with regard to the time when the confession was made. Thus, the submission of learned APP for the State with regard to extra-judicial confession is without any force.
29. We are also unable to accept the submission of learned APP for the State that the recoveries i.e. locket and school bag at the instance of the respondent would prove their guilt in view of the fact that neither in the FIR, Exhibit PW-1/A, which was recorded on the statement of PW-11, Sube Singh, father of the victim, it was mentioned that on the day when he was kidnapped Master Virat was wearing any locket, nor in the hue and cry notice published by the Police, Exhibit PW-22/B, reference was made to either the locket or the school bag, nor the aforesaid two articles would be kept for such a long period.
30. The law with regard to grant of leave to appeal is well-settled. The Court must interfere only in cases where the judgment is illegal perverse or unreasonable.
31. The Apex Court in the case of **Ghurey Lal vs. State of U.P.**, reported at 2008 (10) SCC 450 has laid down the following principles before

granting leave to appeal against an order of acquittal:

“1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has 'very substantial and compelling reasons' for doing so.

A number of instances arise in which the appellate court would have 'very substantial and compelling reasons' to discard the trial court's decision. 'Very substantial and compelling reasons' exist when:

- i) The trial court's conclusion with regard to the facts is palpably wrong;
- ii) The trial court's decision was based on an erroneous view of law;
- iii) The trial court's judgment is likely to result in "grave miscarriage of justice";
- iv) The entire approach of the trial court in dealing with the evidence was patently illegal;
- v) The trial court's judgment was manifestly unjust and unreasonable;
- vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the Ballistic expert, etc.
- vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached-one that leads to acquittal, the other to conviction-the High Courts/appellate courts must rule in favour of the accused.

32. We have carefully examined the judgment of the trial court. Having regard to the principles laid down by the Apex Court in the case of ***Harishchandra Ladaku Thange*** (supra) and in the case of ***Ghurey Lal***

(supra), we do not find that there is any illegality or perversity in the reasoning given in the impugned judgment. The prosecution has been unable to prove the circumstances, from which an inference as to the guilt of the accused is to be drawn, beyond reasonable doubt. Accordingly, no grounds are made out to interfere in the impugned judgment passed by learned trial court and the leave to appeal petition is accordingly dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

FEBRUARY 19, 2015

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