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Crl.A.No.362 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

**Crl.A.No.362 of 2018**

Chokkalingam

... Appellant/Defacto complainant

v.

1. Rajee

2. Muniyan

3. Selvamani

4. Lakshmi

5. Panneerselvam

6. Arulmani

7. Arumugam

8. Ambayiram

... Respondents/accused

9. The State represented by

Inspector of Police,

Chinnasalem Police Station,

Villupuram District.

(Crime No.330 of 2015)

... Respondent/Complainant

Criminal Appeal filed under Section 372 of Code of Criminal Procedure, 1973, against the judgment of acquittal passed in S.C. No.105 of 2017 dated 03.11.2017 on the file of the learned III Additional District and



CrL.A.No.362 of 2018

Sessions Judge, Kallakurichi.

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For Appellant : Mr.V.R.Kamalanathan

For Respondents 1 to 8 : Mr.Duraipandian

For 9<sup>th</sup> respondent : Mr.A.Gokulakrishnan  
Additional Public Prosecutor

### **JUDGMENT**

(Order of the Court was made by M.S.RAMESH, J.)

This Criminal Appeal has been filed by the *de facto* complainant challenging the judgment of acquittal dated 03.11.2017 made in S.C.No.105 of 2017 on the file of the learned III Additional District and Sessions Judge, Kallakurichi.

2. For the sake of convenience, the parties are hereinafter referred to as per their ranking before the trial Court.

3. (i) It is the case of the prosecution that deceased-Muniyan, in the case was the son-in-law of PW1; that the father of A1 had sold one acre of land to PW1; that even after sale of the land A1 and A2 viz., respondents 1



CrL.A.No.362 of 2018

and 2 were using the land sold as a pathway, as a result of which, PW1 had questioned the act of A1 and A2 and a panchayat was held in which A1 and A2 requested PW1 to either sell a portion of the land to them or permit them to use it as a pathway; that PW1 refused to do so; that hence, A7 and A8 along with other accused who are the relatives of A1 and A2 entered into a conspiracy to do away with the deceased or any person, who comes to his aid; that pursuant to the conspiracy on 02.09.2015, at about 9.00 a.m., when PW1 was in his land, the accused/respondents 1 to 6 herein abused PW1 and that A1 and A2 thereafter followed him to his house and attacked him with iron rods indiscriminately; that when the deceased tried to prevent the attack, A1 had attacked him with iron rod; that A5 attacked the deceased with a bill hook; that A2, A3 and A4 attacked the deceased indiscriminately and in that process, the accused attacked PW1 and PW2; and that thereafter, the deceased Muniyan, succumbed to the injuries in the hospital.

(ii) PW1 lodged a complaint [Ex.P1], based on which an FIR [Ex.P15] in Cr.No.330 of 2015 was registered. PW21, the Inspector of Police, after examination of witnesses, arrest of the accused and completion



CrL.A.No.362 of 2018

of the investigation, filed the final report on 05.02.2016, against the accused for the offences under Sections 147, 148, 294 (b), 323, 324, 506 (ii) and 302 r/w 120-B of the IPC, before the learned Judicial Magistrate, Kallakurichi.

(iii) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with and was committed to the Court of Session in S.C.No.105 of 2017 and was made over to the learned III Additional District and Sessions Judge, Kallakurichi, for trial. The trial Court framed charges under Sections 120-B, 148, 294(b), 324 (2 counts), 302 and 506 (ii) of the IPC against A1 and A2; under Sections 120-B, 148, 294(b), 302 and 506 (ii) of the IPC against A3 and A5; under Sections 120-B, 148, 294(b), 302, 324 and 506 (ii) of the IPC against A4; under Sections 120-B, 147, 294(b), 120-B r/w 302, 323 and 506 (ii) of the IPC against A6; and under Sections 120-B r/w 302 of the IPC against A7 and A8, and when questioned, the accused pleaded 'not guilty'.

(iv) To prove the case, the prosecution examined 21 witnesses as P.W.1 to P.W.21, marked 32 exhibits as Exs.P1 to P32, and marked 13



Material Objects as M.O.1 to M.O.13. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The accused did not examine any witnesses, but marked two exhibits, Ex.D1 [Accident Register in respect of one Selvamani (A3)] and Ex.D2 [Accident Register in respect of one Lakshmi (A4)].

(v) On appreciation of oral and documentary evidence, the trial Court acquitted all the accused, holding that the prosecution had not established its case beyond reasonable doubt; that the injuries on the A3 and A4 have not been explained by the prosecution; that the *overt acts* attributed to the accused by the witnesses, were not corroborated by the medical evidence; and that PW1's deposition in Court and his statement under Section 164 of the Cr.P.C., are totally different. Hence, PW1-*de facto* complainant, has preferred the appeal challenging the said judgment of acquittal.

4. Heard, Mr.V.R.Kamalanathan, learned counsel appearing for the appellant; Mr.Duraipandian, learned counsel appearing for the accused/respondents 1 to 8; and Mr.A.Gokulakrishan, learned Additional Public Prosecutor appearing for the 9<sup>th</sup> respondent/State.



CrL.A.No.362 of 2018

WEB COPY

5. The learned counsel for the appellant/*de facto* complainant submitted that the findings of the trial Court are perverse; that the trial Court had ignored the evidence of the injured eyewitnesses; that mere non-explanation of a minor injury on the accused would not be fatal to the prosecution case; and that the trial Court ought to have seen that the accused were involved in the occurrence and had a strong motive to attack PW1 and his family members. Hence, he prayed to set aside the judgment of the trial Court and to convict the accused/respondents 1 to 8.

6. The learned counsel for the accused/respondents 1 to 8 herein *per contra* submitted that the findings of the trial Court are based on the evidence; that the learned trial Judge has given plausible reasons for acquittal; that if two views are possible, this Court should not ordinarily interfere with the view, expressed by the trial Court while acquitting the accused and relied upon the judgment of the Hon'ble Supreme Court in ***Union of India v. Pravat Kumar Behuria***, reported in (2019) 10 SCC 220.



CrL.A.No.362 of 2018

7. We have carefully considered the rival submissions and have perused all the relevant records.

8. The evidence of PW20, the doctor who had made entries in the Accident Registers, viz., Ex.P18, in respect of the deceased, Ex.P19, in respect of Kalaiarasan [PW2] and Ex.P20, in respect of PW1-Chockalingam, admitted in his cross examination that on the same day, A3 was admitted in the same hospital and the entry in the Accident Register -Ex .D1 for A3 shows that four known persons had attacked him with the wooden logs. The injury suffered by him is a lacerated wound measuring 4x3x2cms in the left parietal region and he was treated as an inpatient in the hospital. Further, PW20 had also made entries in Ex.D2, the Accident Register pertaining to A4, wherein she had stated that three known persons had attacked her with sticks. The doctor had also stated that the deceased and the other two injured persons, PW1 and PW2, had suffered head injuries and had stated as follows:

“6 நபர்கள் தடி கம்பி போன்ற ஆயுதங்களை வைத்து ஒரு நபரின் உடம்பில் மாறி மாறி அடிக்கும் போது அதிகபடியான காயங்கள் ஏற்பட வாய்ப்புண்டா என்றால் வாய்ப்புண்டு. முனியன்,



CrL.A.No.362 of 2018

WEB COPY

சொக்கலிங்கம் கலையரசன் உடம்பில் நிறைய காயங்கள் இல்லை  
தலையில் தான் உள்ளது.”

9. The learned trial Judge therefore found that the injuries to the accused have not been explained by the prosecution and the *overt acts* attributed by the witnesses to the accused did not correspond to the injuries noted by the doctor.

10. It is also seen that PW1 had given a statement under Section 164 of the Cr.P.C., before the Magistrate [Ex.P30], in which he had referred to the involvement of one Kannan, Senthil, Manivannan and Selvam in the attack. The relevant portion of PW1's evidence in the cross-examination reads as follows:

“நீதிமன்றத்தில் வாக்குமூலம் அளித்தபோது கண்ணன்,  
செந்தில் மணிவண்ணன் செல்வம் ஆகியோர்கள் சேர்ந்து  
தாக்கியதாக சொல்லியுள்ளேன் என்றால் சரி.”

This version is contrary to his deposition in Court. He had also admitted that both A3 and A4 were taking treatment for the injuries suffered by him. However, he had not explained the injuries to the accused. The trial Judge



therefore found that PW1 had not come out with the truth as to how the occurrence took place.

11. The learned Judge also pointed out the contradictions in the evidence of PW1 to PW3 as regards the *overt acts* attributed to each of the accused and therefore, held that the said contradictions coupled with the medical evidence would disprove the versions of PW1 to PW3; that they had suppressed several material facts; and that they have been tutored to depose against the accused, with whom they had a property dispute and a grudge. The trial Court also found that no other independent witness was examined to prove the prosecution case.

12. On an overall reading of the evidence and the judgment of the trial Court, we are of the view that the trial Judge had given plausible reasons for acquittal and in any case, it cannot be said that those findings are perverse. It is well settled that even if two reasonable views are possible, the one that leads to acquittal has to be accepted.



13. It would be useful to refer to the following observations of the Hon'ble Supreme Court in *Union of India v. Pravat Kumar Behuria*, reported in **(2019) 10 SCC 220**.

“14. It is trite law that judgments of acquittal should not be disturbed unless there are substantial or compelling reasons. The substantial or compelling reasons to discard a judgment of acquittal were examined by this Court in *Ghurey Lal v. State of Uttar Pradesh* [(2008) 10 SCC 450] which are as follows:

“70....1.

- 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.”



CrL.A.No.362 of 2018

WEB COPY

14. This Court finds no perversity in the finding and therefore, not inclined to interfere with the judgment of acquittal in S.C. No.105 of 2017 dated 03.11.2017, on the file of the learned III Additional District and Sessions Judge, Kallakurichi and the same is confirmed. The Criminal Appeal stands dismissed, accordingly.

(M.S.R.,J.) (S.M.,J.)  
25.06.2024

Index : yes/no  
Speaking /Non-speaking order  
Neutral citation : yes/no  
ars

M.S.RAMESH,J.  
AND  
SUNDER MOHAN,J.  
ars

To

1. The III Additional District and Sessions Judge,  
Kallakurichi
2. The Inspector of Police,  
Chinnasalem Police Station,  
Villupuram District.



*Crl.A.No.362 of 2018*

3. The Public Prosecutor,  
High Court, Madras.

Crl.A.No.362 of 2018

25.06.2024