



WEB COPY



Crl.A.No.553 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2024

CORAM :

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

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.553 of 2018

Tmt.Sivagami

... Appellant

VS.

1.Ranjith

2. Vinoth @ vinoth kumar

3.Mohan @ Mohan Raj

4.Vanitha

... Respondents 1 to 4/A1 to A4

5.State by the Inspector of Police,
Ranipet Police Station,
Vellore District.

(Crime No.541 of 2007)

...5th respondent/complainant

Criminal Appeal filed under Section 378 of Code of Criminal Procedure, 1973, to call for the entire records in connection with S.C.No.72 of 2010 on the file of the Additional Sessions Court, Fast Track Court No.II, Ranipet,



Crl.A.No.553 of 2018

Vellore District and set aside Judgment dated 21.04.2011 passed in S.C.No.72 of 2010 by the Additional Sessions Court, Fast Track Court No.II, Ranipet, Vellore District.

For Appellant : Mr.V.Paarthiban

For Respondents : Mr.E.Kannadasan (for R1, R2 and R4)
Mr.L.Mahendran (for R3)
Mr.E.Raj Thilak (for R5)
Additional Public Prosecutor
Assisted by
Mr.C.Aravind

JUDGMENT

(Order of the Court was made by SUNDER MOHAN,J.)

This Criminal Appeal against the acquittal has been preferred by P.W.1, the mother of the deceased.

2 (i). It is the case of the prosecution that A1 and A4/respondents 1 and 4 are husband and wife; that the deceased attempted to have physical relationship with A4; that A1 and A4 were enraged by that conduct; that A2 had independent motive to do away with the deceased; that A2 had an affair



Crl.A.No.553 of 2018

with one Priya who was the niece of P.W.7; that A2 was in possession of photographs which showed his intimacy with said Priya; that the deceased at the instance of P.W.7 took away the photographs and hence, A2 was also aggrieved with the conduct of the deceased; that A2 is also a friend of A1; that A3 is another friend of A1; that A2 and A3 took the deceased to the scene of occurrence; that A1 and A2 attacked the deceased on the hands and legs; that A1 with the assistance of A2 strangled the neck of the deceased; and that all the accused threw the body of the deceased in an abandoned well.

(ii) It is the further case of the prosecution that on 22.11.2007, at about 4:30 p.m. the body of the deceased was found floating in a well, and on information, the Police took the body and sent it to the Government Hospital for a post-mortem; that on 22.11.2007, P.W.11 lodged a written complaint about the incident with the respondent police, and a case in Crime No.541 of 2007 was registered under Section 176 of the Cr.P.C. The printed copy of the FIR is marked as Ex.P7.



WEB COPY



Crl.A.No.553 of 2018

(iii) P.W.16 took up the investigation. After preliminary investigation, the case was altered to one under Sections 302 and 201 of the IPC. After the examination of all other witnesses, the Investigating Officer/PW17 filed the Final Report under Sections 302 and 201 of the IPC.

(iv) On the appearance of the accused/respondents 1 to 4, the provisions of Section 207 Cr.P.C., were complied with, and the case was committed to the Court of Session in S.C.No.72 of 2010 and was made over to the learned Additional Sessions Judge, Ranipet, for trial. The trial Court framed charges u/s.302 r/w 34 of the IPC and 201 r/w 34 of the IPC as against the accused/respondents 1 to 4 and when questioned, the accused/respondents 1 to 4, pleaded 'not guilty'.

(v) To prove the case, the prosecution examined 17 witnesses as P.W.1 to P.W.17, marked 17 exhibits as Exs.P1 to P17, and marked 6 Material Objects as M.O.1 to M.O.6. When the accused/respondents 1 to 4



Crl.A.No.553 of 2018

were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The accused/respondents 1 to 4 did not examine any witnesses or mark any document.

(vi) The Trial Court found that the prosecution had not established its case beyond reasonable doubt and acquitted all the accused/respondents 1 to 4.

3. Heard, Mr. V.Paarthiban learned counsel for the appellant, Mr.E.Kannadasan for 1st 2nd and 4th respondents, Mr.L.Mahendran for 3rd respondent and Mr.E.Raj Thilak, the learned Additional Public Prosecutor for 5th respondent/State.

4. The learned counsel for the appellant submitted that the Judgment of the Trial Court is perverse and has ignored the evidence of P.W.1 relating to the fact that A2 and A3 took the deceased from the house on 20.11.2007; that motive has been established and all circumstances have been conclusively established by the prosecution.



Crl.A.No.553 of 2018

WEB COPY

5. The learned Additional Public Prosecutor reiterated the submissions made by the appellant, though the State has not filed any appeal against the acquittal.

6. The learned counsel for respondents 1 to 4 submitted that the Judgment of the Trial Court is a well-considered one, and in an appeal against acquittal, unless this Court finds that the finding is perverse, the judgment of the acquittal cannot be interfered with; that in any case, even if two views are possible in an appeal against acquittal, this Court would not interfere, as has been held by the Hon'ble Supreme Court in several cases.

7. We have carefully considered the rival submissions and perused all the relevant materials placed before us.

8. As stated earlier, the prosecution had examined 17 witnesses. PW1 to PW3 are related to the deceased and who speak to the fact that A2 and A3 took the deceased in a motorbike on 20.11.2007 from the house; PW4 is a



Crl.A.No.553 of 2018

hearsay witness who came to know subsequently that the deceased was taken in a motorcycle by A2 and A3; PW5 is the Observation Mahazar witness; PW6, turned hostile; and PW7 speaks to the effect that the deceased helped him in getting certain photographs from A2. According to the prosecution, the said photographs showed intimacy between A2 and the niece of PW7.

9. PW8 is the Village Administrative Officer, who assisted the investigation while the dead body was recovered from the well; PW9 turned hostile; PW10 is the Photographer; PW11 is the Assistant Director in the Forensic Science Department; PW12 is the post-mortem Doctor; PW13 is the Doctor who examined the specimen of hyoid bone of the deceased at the request of the learned Judicial Magistrate, Wallajahbad; PW14 is the Investigating Officer; PW15 is the Sub Inspector of Police, who recorded the FIR; PW16 is another Investigating Officer, who filed the final report; and PW17 is the Circle Inspector, who recorded the evidence of PW12, the post-mortem Doctor.



WEB COPY



Crl.A.No.553 of 2018

10. It is the prosecution case, as stated earlier, that A4 is the wife of A1, and the deceased was troubling A4 and constantly harassing her in the absence of A1 to have a physical relationship. However, we find that none of the prosecution witnesses have spoken about the motive alleged by the prosecution. The motive is therefore not established.

11. It is also the prosecution case that A2 had an independent motive to do away with the deceased, as the deceased helped PW7, who is the uncle of A2's lover, recover certain photos from his possession. PW7, who speaks about the said fact, does not say that A2 had any enmity against the deceased for doing so.

12. Be that as it may. PW1, in the complaint, stated that A2 and A3 took the deceased on a bike. The said complaint was lodged two days after the deceased allegedly went along with A2 and A3 on 20.11.2007. No explanation has been given for the delay in the complaint. That apart,



Crl.A.No.553 of 2018

PW2 in the evidence had stated that all the accused were arrested on 22.11.2007 and the police insisted that the complaint contain the names of all the accused. The relevant portion reads as follows:

“மேற்சொன்ன விவரங்கள் வழக்கிற்கு உதவாது என்றும் எனவே எதிரிகளின் பெயரில் எழுத வேண்டும் என்று சொல்லி எதிரிகள் அனைவரையும் அழைத்து வந்த பிறகு போலீஸ் புகாரை எழுதி வாங்கினார்கள் என்று சொன்னால் உண்மைதான்”

13. It is well settled that if the FIR is held to be fabricated, the entire fabric of the prosecution case would collapse. This Court is reminded of the observations of the Hon'ble Supreme Court in this regard in **Marudanal Augusti vs State Of Kerala** reported in (1980) 4 SCC 425 wherein the Hon'ble Supreme Court observed as follows:

“The High Court seems to have overlooked the fact that the entire fabric of the prosecution case would collapse if the FIR is held to be fabricated or brought into existence long after the occurrence and any number of witness could be added without there being anything to check the authenticity of their evidence.”



WEB COPY



Crl.A.No.553 of 2018

14. Thus, we find that the evidence of PW1 to PW3 with regard to the accused taking the deceased in a motorbike cannot be believed. In the absence of motive coupled with the doubtful evidence with regard to the circumstance of last seen, we are of the view that the finding of the trial Court holding the respondents 1 to 4 not guilty of the offence cannot be interfered with.

15. In any event, it is well settled that in an appeal against acquittal, this Court could not interfere unless the findings of the trial Court are perverse. This position is well settled, and we may refer to the observations of the Hon'ble Supreme Court in *Union of India v. Pravat Kumar Behuria*, reported in **(2019) 10 SCC 220**, in this regard, which read as follows:

“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.”

16. In this case, the trial Court found that the complaint has been fabricated; the arrest of the accused was not done on 26.11.2007, as alleged by the prosecution and the accused were arrested much earlier and the complaint was prepared later. Further, the motive has not been established by the prosecution. The judgment of acquittal of the trial Court therefore,



Crl.A.No.553 of 2018

cannot be held to be perverse. The view taken by the trial Court is a plausible view and we are inclined to accept the said view. Therefore, this Criminal Appeal is liable to be dismissed and, accordingly, dismissed. The judgment dated 21.04.2011 made in S.C.No.72 of 2010 on the file of the Additional Sessions Court, Fast Track Court No.II, Ranipet, Vellore District, is hereby confirmed.

(M.S.R.,J)

(S.M.,J)

24.01.2024

Index : yes/no
Neutral citation : yes/no
ars/dk



Crl.A.No.553 of 2018

To

1.The Additional Sessions Court
Fast Track Court No.II,
Ranipet,
Vellore District.

2.The Inspector of Police
Ranipet Police Station,
Vellore District.

3.The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.A.No.553 of 2018

M.S.RAMESH,J.

and

SUNDER MOHAN,J.

Ars/dk

Crl.A.No.553 of 2018

24.01.2024