

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders reserved on 02.09.2016)

DATED : 26.09.2016

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

Crl.A.No.394 of 2007

Mrs.J.Poongodi ... Appellant/Complainant

Vs.,

1.Kalitheerthan,
Inspector of Police,
Kalakurichi.

2.Kandasamy,
Head Constable (304),
Kallakurichi. ... Respondent/Accuseds

Prayer: Criminal Appeal has been filed under Section 378 of Cr.P.C., praying to set aside the Judgement dated 14.07.2006 passed by the learned Principal District Sessions Judge, Villupuram District, in Crl.A.No.83 of 2005, confirming the order dated 26.09.2005 passed by the learned Chief Judicial Magistrate, Villupuram in C.C.No.4 of 2004.

For Petitioner : Mr.G.Prabhakaran
For Respondents : Mr.N.R.Elango, Senior Counsel
for Mr.M.Krishnamurthy &
Mr.C.Muruganandham (for R1 & R2)

JUDGMENT

This appeal has been filed by the appellant/complainant as against the judgment of acquittal dated 14.07.2006 in Crl.A.No.83 of 2005 passed by the learned Principal District Sessions Judge, Villupuram, reversing the judgment of conviction/sentence passed by the learned Chief Judicial Magistrate, Villupuram in C.C.No.4 of 2004 dated 26.09.2005.

2.The brief facts of the case of the appellant/complainant are as follows:

The appellant herein is a middle school teacher and she is working in Panchyat Union Middle School at Thandalaiperulvagoor, Kallakurichi. There was a dispute between the appellant's husband Jayaramakrishnan and their neighbour one Elumalai with regard to the construction of his house. While so, on 03.01.2004, the said Elumalai assaulted the appellant's husband Jayaramakrishnan; hence, the

appellant's husband lodged a complaint before the Kallkurichi Police Station, where the respondents herein are working as Inspector of Police and Head constable respectively; but, no action was taken by the respondents herein on the said complaint; hence, the appellant's husband Jeyaramakrishnan gave petitions to the Superintendent of Police, DIG of Police and also to Chief Ministers (Special Cell). Infuriated over the petition preferred by the appellant's husband, on 17.02.2004 at about 6.00 pm, when the appellant alone was in her house, the respondents herein trespassed into to the house of the appellant and asked her about the whereabouts of her husband, for which she replied that her husband had gone to Kallkurichi. Then, the 2nd respondent/A2 abused her in filthy language and threatened her to withdraw the complaint given by her husband. Further, the 1st accused, on seeing the above said Elumalai, who was standing there, by asking him to give false complaint, told that based on such false complaint, he would put the appellant in jail and he would see to it that she is removed from her government job. The 1st respondent further threatened the appellant stating that she should not disclose the threat made to her and if she reveals, her entire family would be finished. Hence, the appellant has filed a private complaint under Section 200 of Cr.P.C., as against the respondents herein, for the alleged offences punishable under Sections 294, 448 & 506(ii) IPC, before the learned Chief Judicial Magistrate, Villupuram. Since prima facie case was made out, the said complaint was taken on file as C.C.No.4 of 2004 and summons were issued to the respondents/accused. After appearance of the respondents/accused, the copies of the complaint were given to the respondents/accused and when the respondents/accused were questioned for the alleged offences, the respondents/accused denied the charges.

3.Before the Trial Court, the appellant/complainant examined herself as P.W.1, besides examining two other witnesses viz., one Murugan and Mariyappan as P.W.2 & P.W.3 and marked the petitions sent by the appellant's husband as Ex.P.1 (series) and acknowledgements for the same as Ex.P.2 (series). Before the Trial Court, the respondents/accused have taken a defence of alibi, stating that they were not present in the place of occurrence at the time of alleged offence; in order to substantiate their defence, they examined three witnesses viz., one Gunasekara (Camp Clerk), Manoharan (Assistant, Collectorate) and Krishnamurthy (Head Constable) as D.W.1 to D.W.3 and marked the following documents as Ex.D.1 to Ex.D.4

i)Daily Diary of the Inspector of Police- dated 17.02.2004

ii)Daily Diary of the Inspector of Police - dated 18.02.2004

iii)Daily Diary of the 1st respondent relating to the period 01.01.2004 to 22.02.2004.

iv)General Diary of Kallakurichi Police Station for the

period 08.02.2004 to 15.03.2004.

4.The Trial Court, after considering the oral and documentary evidence adduced on both sides, has found the 1st accused guilty under Sections 448 & 506(i) IPC and the 2nd accused guilty under Section 448 & 294(b) IPC. Thus, the Trial Court convicted and sentenced the respondents herein as follow:-

	Conviction	Sentence
1st respondent/A1	Section 448 IPC	SI for one year and to pay a fine of Rs.1,000/- in default to undergo three months SI
1st respondent/A1	Section 506(i) IPC	SI for two years and to pay a fine of Rs.1,000/-, in default to undergo three months SI.
2nd respondent/A2	Section 448 IPC	SI for one year and to pay a fine of Rs.1,000/- in default to undergo three months SI
2nd respondent/A2	Section 294(b) IPC	to pay a fine of Rs.1,000/- in default to undergo SI for three months
Sentences of imprisonment were ordered to run concurrently		

5.Aggrieved over the conviction and sentence passed by the Trial Court, the respondents herein/Accused preferred an appeal in CrI.A.No.83 of 2005 before the learned Principal Sessions Judge, Villupuram. The lower appellate Court has set aside the conviction and sentence passed by the Trial Court and allowed the appeal, thereby acquitted the respondents herein/accused from the case. Hence, the appellant/complainant has preferred the present appeal before this Court.

6.The learned counsel for the appellant would submit that one of the reasons assigned by the lower appellate Court for acquitting the respondents/accused is that without examining the husband of the appellant/complainant, the contents of the complaint given by the appellant cannot be proved. In this regard, the learned counsel for the appellant submitted that the petitions sent by the appellant's husband to the higher police officials & Chief Minister's Special Cell were marked on the side of the appellant as Ex.P.1; that the appellant had also spoken about the lodging of complaint by her husband, in her evidence as well as in her sworn statement; furthermore, the ultimate decision has to be arrived in this case only

based on the incident that had occurred on 17.02.2004 at 6.00 pm in the house of the complainant/appellant herein and not based on the contents made in the complaint/petitions sent by the husband of the appellant herein; however, the petitions sent by the husband of the appellant were also marked as Ex.P.1 (series), only for the purpose of establishing the fact that since the appellant's husband sent petition to the higher police officials, the respondents herein/accused developed animosity against the appellant's family.

7.The learned senior counsel for the appellant would further submit that it is yet another finding of the lower appellant Court that P.W.2 & P.W.3 are close relatives and they are only chance witnesses. But, the fact remains that the evidence of P.W.2 & P.W.3 would clearly show that they are not relatives of the appellant herein. In fact, the Trial Court has discussed this aspect in detail in paragraphs 15 & 16 of its judgment. Though the lower appellate Court has stated that P.W.2 & P.W.3 are chance witnesses, P.W.2 had categorically stated in his evidence that he had gone to the village of the complainant/appellant herein viz., Siruvangoor on the date of occurrence and he has a house in the said village and he came to the said village to supply Milk to the Milk Society in the said Village. P.W.3 has also stated in his evidence that he came to the village to see his relatives. Hence, there is proper explanation by P.W.2 & P.W.3 for their presence at the place in the commission of offence at the time of occurrence.

8.The learned counsel for the appellant has also submitted that the lower appellate Court has raised a doubt as to why no witness from the same street was examined on the side of the appellant/complainant. In this regard, it is submitted by the learned counsel for the appellant/complainant that in her evidence, the appellate/complainant/P.W.1 has clearly stated that out of fear, the neighbours of the appellant, from the same street, did not come forward to depose evidence. In fact, the evidence of P.W.1 to P.W.3 clearly proves the case of the appellant/complainant and their evidence corroborates with each other and further, no favourable reply to the defence was brought out from P.W.2 & P.W.3 by the respondents/accused during the course of cross-examination. But, without considering these aspects, the lower appellate Court has wrongly set aside the well considered judgment of the Trial Court.

9.The learned counsel for the appellate would further submit that the respondents/accused have taken a plea of alibi and in order to prove the defence of alibi, they have examined three witnesses and marked four documents. According to the 1st respondent, on 17.02.2004 he was in the Collectorate Office for getting a remand order under the Goodas Act in respect of the accused Kora Kaliyan. In order to prove the said defence, the extracts of daily Diary of the Inspector of

Police/A1 relating to 17.02.2004 and 18.02.2004 were marked as Ex.D.1 & Ex.D.2. But, Ex.D.1 & Ex.D.2 contain seal of the Office of Deputy Superintendent of Police, Kallakurichi, as if the said extracts of Daily Diary of the Inspector of Police were received on 28.02.2004 by the Office of DSP. But, a close scrutiny of Ex.D.1 & Ex.D.2 would show that numerical '2' was inserted before '8' in the seal by using pen, in order to show that the detention order was passed on 17.02.2004 and thereafter, Daily Diary extracts were sent to the office of DSP and the same were received on 28.02.2004. Thus, it is the submission of the learned counsel for the appellant that Daily Diary extract of an earlier date was manipulated by the accused in order to show that on 17.02.2004 they were in the Collectorate Office. It is further submitted by the learned counsel for the appellant that no copy of affidavit, detention order or grounds of detention, travel entries of Jeep were marked to prove atleast that a detention order was passed on 17.02.2004, on which date according to the 1st respondent/A1, he was present in the office of Collectorate.

10.Further, with regard to the defence of alibi that the 1st respondent/A1 was present in the Collectorate Office on the date of occurrence, learned senior counsel for the appellant would invite the attention of this Court to the evidence of D.W.2 and submitted that in his evidence, D.W.2 has stated that on 14.02.2004, the 1st respondent/A1 had filed an affidavit for detaining one Kora Kaliyan under Goodas Act before the District Collector; but, whereas, in the General Diary extract marked through D.W.3 would show that on 14.02.2004 the 1st respondent/A1 was said to be on Bhandobust duty at Athipatti Joseph High Secondary School throughout the day 14.02.2004. Thus, the learned counsel for the appellant submitted that only in order to help the respondents/accused, EX.D.1 to Ex.D.4 were created and filed before the Court through D.W.1 to D.W.3.

11.Further, the learned counsel for the appellant, by inviting the attention of this Court to Ex.D.1 & Ex.D.2, submitted that the name of the detainee was Kora Raman, later 'raman; was scored out and replaced with 'kaliyan'. This manipulation was purposely done by the accused, which would to show that some earlier document was used by the accused for the purpose of setting up a plea of alibi. Thus, it is the submission of the learned counsel for the appellant that the defence of alibi was not properly proved by the accused.

12.Apart from the above submissions, the learned counsel for the appellant has also submitted that while dealing with the appeal against the order of acquittal, this Court has full power to reassess the evidence on record, if the finding of the Court below is perverse. In the instant case, the Trial court by properly appreciating the evidence adduced on both sides had rightly convicted the accused; but, the lower appellate Court has erroneously acquitted the accused. Thus,

the learned counsel for the appellant submitted that by setting aside the judgment of the lower appellate, the conviction and sentence passed by the trial Court shall be confirmed.

13. Countering the submissions made by the learned counsel for the appellant, the learned senior counsel for the respondents would submit that the lower appellate Court has rightly come to the conclusion that origin of the case is a dispute between the appellant's husband and one Elumalai; that P.W.1 has also deposed before the trial Court that her husband was assaulted by the said Elumalai and a complaint was lodged by her husband against the said Elumalai; since no action was taken by the respondents/police, the husband of the appellant has given petitions to the higher officials and Chief Minister's Special Cell; infuriated over the same, according to the appellant, the respondents/accused came to her husband and committed the offence as alleged in her complaint. It is the submission of the learned senior counsel for the respondents that in this factual background of the case, the lower appellate Court has rightly held that the non-examination of the husband of the appellant is fatal to the case of the complainant/appellant herein.

14. With regard to the evidence of P.W.2 & P.W.3, it is the submission of the learned senior counsel for the respondents that the names of P.W.2 & P.W.3 were not mentioned in the complaint given by the appellant herein/complainant; that only after the presentation of the complaint, these witnesses (P.W.2 & P.W.3) have been created merely for the reasons that they are relatives of the complainant; that they are only chance witnesses. In fact, the allegations made in the complaint are nothing, but falsehood, since no such occurrence had taken place. No person in the same street of the complainant's house came forward to depose in the Court. Therefore, according to the learned senior counsel for the respondent, the appellant/complainant has not proved her case by cogent and convincing evidence.

15. Further, the learned senior counsel for the respondents has pleaded the defence of alibi and in order to prove the defence of alibi, the respondents examined D.W.1 to D.W.3, who are all official witnesses. The evidence adduced by D.W.1 was not shattered in the cross-examination. On the date of alleged occurrence i.e., on 17.02.2004, the 1st respondent was present in the Collectorate Office for the purpose of receiving remand order under Goondas Act in respect of one Kora Kaliyan.

16. With regard to the submission made by the learned counsel for the appellant that there are contradictions in the entries made in the General Diary and Daily Diary to the effect that according to the General Diary Ex.D.4, on 14.02.2004, the 1st respondent/A1 was on Bhandohash duty at

Athipatti Joseph High Secondary School throughout the day, whereas D.W.3 had stated in his evidence that A1 appeared before the Collectorate to file an affidavit with regard to obtaining detention order in respect of one Kora Kaliyan. The learned counsel for the respondents submitted that on 14.02.2004, A1 has filed only an affidavit; therefore, there is no need for him to be present in the Collectorate Office on that date; therefore, there cannot be any entry in the General Diary to the effect that on 14.02.2004 he appeared before the Collector on that day. Thus, it is the submission of the learned senior counsel for the respondents that the respondents have proved the defence of alibi by cogent and convincing evidence. Hence, by proper appreciation of the evidence, the lower appellate Court has set aside the judgment of conviction passed by the trial Court. Therefore, according to the learned senior counsel for the respondents, no interference is required from this Court to the impugned judgment of acquittal passed by the lower appellate. Thus, he sought for dismissal of the present appeal.

17. Heard the submissions made on either side and perused the materials available on record.

18. The case of the appellant is that since there was a dispute between the husband of the appellant and one Elumalai with regard to raising a construction; in the said dispute, the appellant's husband was assaulted by the said Elumalai; hence, the appellant's husband had given a complaint before the respondents herein/police. Since no action was taken on the said complaint by the respondents herein, the appellant's husband has given petitions to the higher officials and Chief Minister's Special Cell. Infuriated over the same, the respondents came to the house of the appellant and abused her in filthy language and threatened her. Therefore, as contended by the learned senior counsel for the respondents, the origin of the present case is the dispute between the appellant's husband and the said Elumalai. The motive for the present case is the petitions given by the appellant's husband to the higher officials of the respondents herein. But, the appellant's husband was not examined by the appellant before the Trial Court. In this regard, the learned senior counsel for the respondents relied upon Section 22 & 59 of Evidence Act, which read as follows.

Section 22:- When oral admissions as to contents of documents are relevant_ Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question."

Section 59:- Proof of facts by oral evidence_ All

facts, except the contents of documents or electronic records may be proved by oral evidence.

Therefore, as contended by the learned senior counsel for the respondents, a combined reading of the above said provisions of the Evidence Act would clearly show that the best evidence from a person/witness who could speak about the contents of a document is only the person who had authored it. But, in the instant case, the appellant has not chosen to examine her husband, who had given petitions against the respondents herein to the higher officials.

19. It is the submission of the learned counsel for the appellant that the case of the appellant is only with regard to the occurrence that had taken place in the house of the appellant on 17.02.2004, therefore, the contents in the complaint lodged by the appellant's husband against the said Elumalai and the petitions given by him to the higher officials, have nothing to do in proving the allegations made by the appellant against the respondents. But, I am not inclined to accept the said submission made by the learned counsel for the appellant. Non-examination of the material witness without proper explanation leads only to an inference that if the material witness is examined that evidence would have been adverse to the case of the prosecution as per Section 114(g) of the Indian Evidence Act. In this regard, a reference could be placed in the judgment reported in 2007(1) LW (crl) 280 [Sudalaiyandi Vs. State], wherein it has been held as follows:-

"19..... But unfortunately, the prosecution has not chosen to examine the witnesses who have informed the Investigating Officer, P.W.14, as stated above, and this Court left with no other alternative except to draw adverse inference against the prosecution for withholding the material witnesses in this case under Section 114(g) of the Evidence Act."

20. Further, as contended by the learned senior counsel for the respondents, I find that P.W.2 & P.W.3 are not the neighbours of P.W.1/complainant/appellant herein. Though it is the case of the appellant/complainant that the neighbours had witnessed the occurrence, she has not chosen to examine the neighbours. Furthermore, along with the complaint, the appellant has not given the list of witnesses. P.W.2 & P.W.3 were produced as witness only after the presentation of the complaint. Therefore, I find some force in the submission made by the learned senior counsel for the respondents that these two witnesses (P.W.2 & P.W.3) have been created for the purpose of supporting the evidence of P.W.1 and they are only a chance witness and they have also not given any acceptable explanation for their presence in the place of occurrence. As

contended by the learned senior counsel for the respondents, in the absence of any acceptable reason for their presence in the place of occurrence, the evidence of P.W.2 & P.W.3 does not inspire the confidence of the Court. In this regard, a reference could be placed in the decision of the Hon'ble Supreme Court, which was relied upon by the learned senior counsel for the respondents, reported in (2003) 9 SCC 45 (Baldev Singh Vs. State of M.P.) wherein it has been held as follows_

"16.Both the eyewitnesses are chance witnesses. They do not assign any convincing reason for being at the place of the incident at that abnormal hour of the day in full summer. Raghubir Singh, P.W.4 was suffering from pain in the legs. He would not cycle to Shivpuri except for urgency or pressing need, which there was none.

18.... Looking to the cumulative effect of all the abovesaid circumstances and having scrutinized the testimony of the two eyewitnesses carefully, we are not inclined to place reliance on their testimony. Evidence has been adduced on behalf of the defence to show that information as to the death of Peshawar Singh having been caused and the dead body lying on A.B.Road reached Village Baskhedi whereafter some family members of the deceased and the witnesses reached the place of the incident, found the dead body of Peshawar Singh lying there and informed the police whereafter the police swung into action. It was a case of blind murder. Though the testimony of the defence witnesses has been cursorily touched by the trial court and also by the High court with both of whom the testimony of the two eyewitnesses has been found to be more weighty than the defence evidence on weighing in the scales. Having examined the testimony of the defence witnesses, four in number, originating from the residents of the village, we are of the opinion that the same cannot just be thrown overboard. Be that as it may, as we entertain grave doubt on the presence of the two eyewitnesses at the place of the incident so as to have witnessed the incident, the conviction of the two accused-appellants, which rests on the testimony of the two witnesses, cannot be sustained."

The above cited decision is squarely applicable to the present facts of the case. In the instant case also, the presence of P.W.2 & P.W.3 in the place of occurrence at the time of occurrence was not properly proved. Therefore, I do not find any infirmity in the finding rendered by the lower appellate court to discard the evidence of P.W.2 & P.W.3.

21.Before the trial Court, the respondents have taken a defence of alibi. In order to prove the defence of alibi that

they are not in the place of occurrence, they have examined D.W.1 to D.W.3 and marked Ex.D.1 to Ex.D.4. In his evidence, D.W.1 has deposed that on 17.02.2004, the 1st respondent was present in the Collectorate Office for receiving a remand order under Goodas Act in respect of one Kora Kaliyan. D.W.2, who is working as a Writer in the Collectorate Office, had categorically deposed that the respondents on 17.02.2004 were present in his office from 10.00 am to 6.00 pm for receiving the remand order. D.W.3, Head Constable of Kalakurichi Police Station, had furnished the extracts of the Daily Diary of Kalakurichi Police Station and as per the extracts of the Daily Diary of Kalakurichi Police Station, the respondents were present in Collectorate on the date of occurrence. But, according to the appellant, only to help the respondents/accused, the said documents were created by the accused and they are self-serving documents. In this regard, it is submitted by the learned counsel for the appellant that Ex.D.1 & Ex.D.2 contain seal of the Office of Deputy Superintendent of Police, Kallakurichi, as if the said extracts of Daily Diary of the Inspector of Police were received on 28.02.2004 by the Office of DSP; but, a close scrutiny of Ex.D.1 & Ex.D.2 would show that numerical '2' was inserted before '8' in the seal by using pen, in order to show that the detention order was passed on 17.02.2004 and therefore, daily diary extracts were sent to the office of DSP and the same were received on 28.02.2004. Thus, it is the submission of the learned counsel for the appellant that daily Diary extract of an earlier date was manipulated by the accused in order to show that on 17.02.2004 he was in the Collectorate Office. Thus, according to the learned counsel for the appellant, some earlier document was used by the accused for the purpose of setting up a plea of alibi. Further, according to him, in the absence of any copy of the affidavit, detention order or grounds of detention, travel entries of Jeep marked on the side of the respondents/accused, to prove atleast that a detention order was passed on 17.02.2004, on which date according to the 1st respondent/A1, he was present in the office of Collectorate, no reliance could be placed on Ex.D.1 to Ex.D.4 produced on the side of the respondents/accused..

22. But, from a perusal of the evidence of D.W.1 and D.W.3 it is seen that D.W.1 had categorically asserted in his evidence that the respondents were present in the Collectorate Office from 10.00 am to 6.00 pm on 17.02.2004, for the purpose of receiving a detention order under Goodas Act in respect of one Kora Kaliyan. Even in the cross-examination, when a suggestion was put forth stating that the numerical '2' was inserted in Ex.D.1 & Ex.D.2, he has denied the same. Except the said suggestion put to the D.W.1, the appellant has not taken any effort to establish that some earlier document was used to give an impression that on 17.02.2004 the respondents were present in the Collectorate Office. In fact, the evidence of D.W.2, Assistant from the Collectorate Office,

would give a clear inference that the respondents were present in the Collectorate Office at Kallakuruchi. When the evidences of D.W.1 to D.W.3 corroborate with each other to show that the respondents were present in the Collectorate Office on the occurrence date, no significance could be given to the submission made by the learned counsel for the appellant that Ex.D.1 to Ex.D.3 were created for the purpose of this case. In this regard, a reference could be placed in Section 114 of Indian Evidence Act, which reads as follows—

"Court may presume existence of certain facts—
The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case."

Therefore, I am of the opinion that Ex.D.1 & Ex.D.2, which came into existence during the official performance of the respondents cannot be brushed aside by simply accepting the submissions made by the learned counsel for the appellant.

23.It is yet another submission of the learned counsel for the appellant that the General Diary marked as Ex.D.4 would show that the 1st respondent/A1 was said to be on Bhandobasth duty at Athipatti Joseph School on 14.02.2004, whereas, as per Ex.D2 ie., Daily Diary of the Inspector of Police, he was in Collectorate Office, for filing an affidavit to obtain detention order in respect of an accused Kora Kaliyan. Hence, according to the learned counsel for the appellant, the evidence of defence witnesses and the documents marked on their side cannot be relied upon. But, as contended by the learned senior counsel for the respondents, from a perusal of the Ex.D.2 it is seen that on 14.02.2004, the 1st respondent had filed only an affidavit before the Collectorate Office and only on 17.02.2004, he had received the detention order. Therefore, as contended by the learned senior counsel for the respondents, there is no need for the 1st respondent to be present in the District Collector Office for the whole day on 14.02.2004. Therefore, the submission made by the learned counsel for the appellant that the evidence of D.W.1 to D.W.3 and documents marked on their side cannot be relied upon, cannot be countenanced.

24.Further, while dealing with the appeal against the acquittal, the High Court can interfere with the findings of the Court below, only if it is shown that the Court below has manifestly committed illegal error or perversity in its findings. But, in the instant case, I do not find any illegality or perversity in the impugned judgment passed by the lower appellate Court in acquitting the respondents herein.

25.Moreover, in the decision reported in 2003 (12) SCC 606 (Ramanand Yadav Vs. Prabhu Nath Jha), the Hon'ble Apex

Court has dealt with various decisions on the subject and held that though there is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based, generally, the order of acquittal shall not be interfered with, because the presumption of innocence of the accused is further strengthened by acquittal and further that the judgment of acquittal can be interfered with only when there are compelling and substantial reasons for doing so. The Hon'ble Apex Court further held that the golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted and paramount consideration of the Court is to ensure that miscarriage of justice is prevented.

26. Further, in the instant case, the alleged occurrence took place during the year 2004 and now, almost 12 years have lapsed. At this distant point of time, I do not find any valid reason to interfere with the impugned judgment of acquittal passed by the lower appellate Court. Moreover, the evidence available on record does not disclose that the offences alleged against the respondents herein are made out.

For all the above reasons, the Criminal Appeal is liable to be dismissed and the same is accordingly dismissed.

Sd/-
Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

ssv

To,

1. The Principal District Sessions Judge,
Villupuram.

2. The Chief Judicial Magistrate,
Villupuram.

3. The Public Prosecutor, High Court, Madras.

+ 2 ccs to MR.G. Prabakaran, Advocate Sr.55276, 55307

Cr1.A.No.394 of 2007

SAI (CO)

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