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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
26.02.2019	26.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR. JUSTICE B.PUGALENDHI
Cr1. A(MD)No.60 of 2017

Kumar : Appellant/Defacto Complainant
Vs.
1.Chelladurai
2.Ashokkumar
3.Murali
4.Thambidurai : Respondents Nos. 1 to 4/Accused Nos. 1 to 4
5.The Inspector of Police,
Thuraiyur Police Station,
Tiruchirappalli District
Ref.(Crime No.387/2011)
: Respondent No.5/Complainant

PRAYER: Criminal Appeal is filed under Section 372 of the Code of Criminal Procedure, against the judgment dated 28.11.2016 in S.C.No.195 of 2012 on the file of the III Additional District and Sessions Court, Tiruchirappalli.

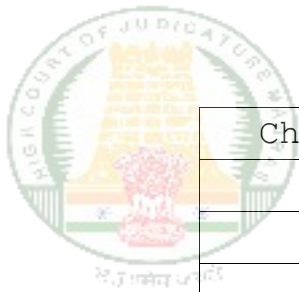
For Appellant : Mr.D.Shanmugaraja Sethupathi
For Respondents : Mr.B.Karunanithi for R1 to R4
Mr.R.Anandaraj for R5
Additional Public Prosecutor

JUDGMENT

B. PUGALENDHI, J.

This criminal appeal is filed against the judgment dated 28.11.2016 passed in S.C.No.195/2012 on the file of the III Additional District and Sessions Judge, Trichirappalli, acquitting all the accused A1 to A4/respondents 1 to 4. Challenging the acquittal, the appellant/P.W.1 is before this Court with this appeal.

2. The Trial Court framed as many as four charges, as detailed below:
<https://hcservices.ecourts.gov.in/hcservices/>



Charge	Penal Provisions	Accused
1	447 IPC	A1, A2, A3 & A4
2	307 IPC	A1, A2
	324 IPC	A3, A4
	307 r/w 34 IPC	A3, A4
3	294 (b) IPC	A1, A2, A3 & A4
4	506 (II) IPC	A1, A2, A3, A4

3. The facts in brief leading to the filing of this criminal appeal are as under:

It is the case of the prosecution that A1 to A4 suspected that Kumar (P.W.1) was a police informant and had supplied information to the police about illicit distillation of liquor by them and so, on 17.09.2011, around 6.30 p.m., when Kumar (P.W.1) was working in his field, the accused attacked him indiscriminately with the intention of causing his death, but he survived their attack. Kumar (P.W.1) was rushed by his neighbour Rajkumar (P.W.2) by ambulance to the Government Hospital, Thuraiyur, where, Dr.S.Meiyyappan (P.W.8) examined him on 17.09.2011 at 7.15 p.m. and noted the following injuries:

- "1) Incised wound from umbilicus length region 6 cm x ½ cm x skin depth and line 3 cm x ½ x skin depth;
- 2) Incised wound right side of chest
 1. 8 cm x ½ cm x skin depth
 2. 10 cm x ½ cm x skin depth
 3. 15 cm x ½ cm x skin depth
 4. 5 cm x ½ cm x skin depth
- 3) Incised wound 8 cm x ½ cm x skin depth inter parietal area
- 4) Contusion forehead 1 cm x 1 cm forehead
- 5) Incised wound left area 5 cm x ½ cm x skin depth.
- 6) Incised wound right side of back 15 cm x ½ cm x skin depth."

The Accident Register copy was marked as Ex.P.4. He referred him to the Government Head Quarters Hospital, Tiruchirappalli for further treatment and so, Kumar (P.W.1) was shifted there.

3.1. On getting intimation from the hospital, Subramanian (P.W.11), the Sub Inspector of Police, went to the hospital and recorded the statement of Kumar (P.W.1), based on which, he registered a case in Crime No.387/2011 under Sections 294(b), 324, 506(II) IPC on 18.09.2011 at 13 hrs. and prepared the printed FIR (Ex.P9).

3.2. The investigation of the case was taken over by Dinesh Kumar, Inspector of Police (P.W.12), who went to the place of occurrence and prepared the observation mahazar (Ex.P11) and rough <https://hcsnecscb.courts.gov.in/HCSB2/index.html> He filed an alteration report (Ex.P10) altering the offence to one under Sections 294(b), 324, 307 and 506(II) IPC and sent the alteration report to the jurisdictional Magistrate. He

arrested Ashokkumar (A2) on 29.09.2011. Chelladurai (A1), Murali (A3) and Thambidurai (A4) were released on anticipatory bail.

3.3. When Chelladurai (A1) appeared before the Investigating Officer to comply with the conditions of bail, on 31.03.2012, the Investigating Officer recorded his statement and based on the disclosure made by him, recovered one knife (M.O.1) and three iron rods (M.O.2 to M.O.4) under the cover of mahazar (EX.P13) in the presence of witnesses Subramanian (P.W.9) and Anand (P.W.10). After recording the statement of various witnesses and the Doctor, who treated Kumar (P.W.1), he completed the investigation and filed final report in P.R.C.No.7/2012 before the Judicial Magistrate, Thuraiyur.

3.4. On the appearance of A1 to A4, the provisions under Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.195 of 2012 and made over to the III Additional District and Sessions Judge, Trichy for trial. The trial Court framed the charges as stated in the second paragraph of the judgment cited supra. When questioned, the accused pleaded not guilty. To prove the case, the prosecution examined 12 witnesses, marked 15 exhibits and 4 material objects.

3.5. When the accused were questioned under Section 313 Cr.P.C., (Chelladurai) A1 admitted his presence in the scene of occurrence, but contended that it was Kumar (P.W.1), who tried to attack him. The accused gave their explanations in writing. After considering the evidence on record and hearing either side, the trial Court has acquitted all the accused of all the charges on 28.11.2016, aggrieved by which, Kumar (P.W.1) is before this Court under proviso (2) to Section 372 of the Code of Criminal Procedure, after obtaining Special Leave.

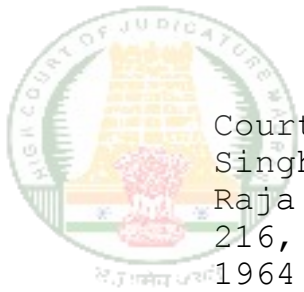
4. For the sake of convenience, the appellant will be referred to as P.W.1 and the respondents would be referred to as A1 to A4.

5. Heard the learned counsel for the appellant (P.W.1), the learned counsel for the respondents 1 to 4 (A1 to A4) and the learned Additional Public Prosecutor for the State.

6. Before advertng to the rival submissions, it may be necessary to bear in mind the law laid down by the Hon'ble Supreme Court in **V.Sejappa v. State [(2016) 12 SCC 150]**, in which, it has been held as under:

"23. In Muralidhar alias Gidda and Anr. v. State of Karnataka (2014) 5 SCC 730, this Court noted the principles which are required to be followed by the appellate court in case of appeal against order of acquittal and in paragraph (12) held as under:-

<https://hcservices.ecourts.gov.in/hcservices/> 12. The approach of the appellate court in the appeal against acquittal has been dealt with by this



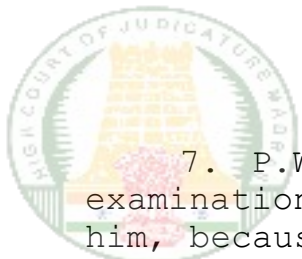
Court in Tulsiram Kanu AIR 1954 SC 1, Madan Mohan Singh AIR 1954 SC 637, Atley AIR 1955 SC 807, Aher Raja Khima AIR 1956 SC 217, Balbir Singh AIR 1957 SC 216, M.G. Agarwal AIR 1963 SC 200, Noor Khan AIR 1964 SC 286, Khedu Mohton (1970) 2 SCC 450, Shivaji Sahabrao Bobade (1973) 2 SCC 793, Lekha Yadav (1973) 2 SCC 424, Khem Karan (1974) 4 SCC 603, Bishan Singh (1974) 3 SCC 288, Umedbhai Jadavbhai (1978) 1 SCC 228, K. Gopal Reddy (1979) 1 SCC 355, Tota Singh (1987) 2 SCC 529, Ram Kumar (1995) Supp 1 SCC 248, Madan Lal (1997) 7 SCC 677, Sambasivan (1998) 5 SCC 412, Bhagwan Singh (2002) 4 SCC 85, Harijana Thirupala (2002) 6 SCC 470, C. Antony (2003) 1 SCC 1, K. Gopalakrishna (2005) 9 SCC 291, Sanjay Thakran (2007) 3 SCC 755 and Chandrappa (2007) 4 SCC 415. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

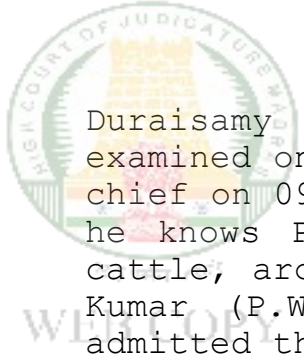
(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."



7. P.W.1 was examined in chief on 18.02.2015. In the chief examination, he has stated that A1 to A4 had previous motive against him, because they believed that he (P.W.1) is a police informant and had given information to the police about the illicit distillation of liquor by them. P.W.1 has further stated that on 17.09.2011 around 6.30 p.m., while he was watering the crops in his field, A1 armed with iron pipe, A2 with knife, A3 and A4 each with a stick came there and asked him, "You only informed the officials about the distillation of illicit liquor by us" saying so, they started attacking him indiscriminately; A1 hit him on his head with an iron rod; A2 hacked him with a knife on his chest and stomach; A3 and A4 hit him on his left shoulder with an iron rod. In the open Court, P.W.1 showed the wounds sustained by him for the Presiding Officer to see. He has further stated that they started chasing him and he ran crying for help, hearing which, people in and around rushed to the place and the accused fled. He has further stated that his cousin Rajkumar (P.W.2) called an ambulance and took him to the Government Hospital, Thuraiyur and from there, he was taken to the Government Hospital, Trichy and was admitted as inpatient; police came there and recorded his statement and read it over to him; the said statement was marked as Ex.P1; he identified the knife (M.O.1) that was used by A2 to attack him and the iron rods M.Os.2, 3 and 4 used by A1, A3 and A4 to belabor him. He was not cross examined on that day. He was recalled on 16.12.2015 and was cross examined. In the cross examination, he has stated that A1 to A4 are relatives and also admitted that Duraisamy (P.W.3) was his brother's father-in-law and Manimaran (P.W.4) and Rajendran (P.W.5) were his distant relatives. It was suggested to him that he had given evidence against Ashokkumar (A2), which suggestion he denied. It was also suggested to him that Ashokkumar (A2) had given complaint against two police officials of the Prohibition and Enforcement Wing for accepting bribe and in order to help them, he (P.W.1) has foisted this case, which suggestion, he denied. On behalf of A1, it was suggested that A1 had done some centring work for P.W.1, for which, P.W.1 had not made any payment and A1 came to P.W.1 demanding the amount and P.W.1 attacked him with a knife, which suggestion he denied; Ultimately, it was suggested to P.W.1 that A1 and P.W.1 grappled and fought, on account of which, P.W.1 sustained injuries.

7.1. Though Rajkumar (P.W.2) turned hostile, he has stated that he found P.W.2 with bleeding injuries around 6.30 p.m. and took him by ambulance to the Thuraiyur Government Hospital and as regards the attack, he did not support the case of the prosecution.

7.2. Duraisamy (P.W.3) has stated that on 17.09.2011, around 6.30 p.m., while he was in his field, he heard a noise from Kumar's (P.W.1) field and when he looked there, he saw A1 to A4 attacking Kumar (P.W.1); he also saw them chasing Kumar (P.W.1) and on hearing Kumar's (P.W.1's) cry for help, they all rushed there; on seeing them, the accused fled. He has further stated that Kumar (P.W.1) was taken to the hospital by Rajkumar (P.W.2) in an ambulance.



Duraisamy (P.W.3) was examined in chief on 09.03.2015 and was cross examined on 07.01.2016. Similarly, Manimaran (P.W.4) was examined in chief on 09.03.2015 and in his chief examination, he has stated that he knows P.Ws.1 to 3 and also the accused; while he was tending cattle, around 6.30 p.m. on 17.09.2011, he saw the accused attacking Kumar (P.W.1). In his cross examination, on 06.04.2016, he has admitted that P.W.1 is his relative.

8. In the teeth of such overwhelming evidence implicating A1 to A4, the trial Court has acquitted them and the reasons given by the trial Court are as under:

(a) though the incident had taken place on 17.09.2011, the complaint was given only on 18.09.2011 and the FIR was registered only at 1.00 p.m. and it reached the Court only on 20.09.2011;

- the trial Court failed to note that P.W.1 was first taken to the Government Hospital, Thuraiyur, where he was examined by Dr.Meiyyappan (P.W.8) on 17.09.2011 at 7.15 p.m. Dr.Meiyyappan (P.W.8), in his evidence, has stated that P.W.1 was brought by one Rajkumar (P.W.2) and he had noted five injuries on P.W.1, which has been set out in Paragraph No.3 above. The evidence of Dr.Meiyyappan (P.W.8) and the injuries found in the Accident Register Copy (Ex.P4) amply corroborate the evidence of P.W.1. On the directions of Dr.Meiyyappan (P.W.8), P.W.1 was shifted to the Government hospital, Trichy, which is 45 kms away;
- For the failure of the police to go to the hospital promptly and record the statement of P.W.1, he cannot be faulted. P.W.1 was not in a position to give a handwritten complaint with injuries all over the body. Therefore, he gave an oral statement, which was recorded by the policeman, who came there, based on which, the FIR (Ex.P9) was registered by Subramanian (P.W.11). That apart, the failure of the police to send the FIR to the Court immediately, is at the most a remissness in investigation, for which, P.W.1 cannot be blamed.

(b) the handwriting on the first page of Ex.P1 is different from the handwriting in the second page of Ex.P1;

Our Reasoning:

- We perused the original of the complaint (Ex.P1). On perusal, we found that the first page of Ex.P1 contains the statement of P.W.1 written by a person. The second page of Ex.P1 contains an endorsement, which reads as under:

"Sir, I received the complaint statement and registered a case in Thuraiyur Police Station Crime No.387/2011 under Sections 294(b), 324, 506(II) IPC on 18.09.2011 at 13 hrs.

sd/- Sub Inspector of police"

- Just because the handwriting of the person, who had written the statement of P.W.1, differed from the handwriting of the person, who wrote the endorsement on the reverse of the complaint, the statement of P.W.1 cannot be disbelieved. No question was put to Subramanian (P.W.11) the Sub Inspector of



Police on this aspect. The trial Judge himself has compared the handwriting and has given a finding that Ex.P1 should be rejected, which, in our opinion, is incorrect.

(c) the evidence of Duraisamy (P.W.3), Manimaran (P.W.4) and Rajendran (P.W.5) were rejected on the ground that they were relatives of P.W.1.

Our Reasoning:

- Time and again, it has been held by the Hon'ble Supreme Court that the testimony of a witness cannot be rejected, just because, he is the relative of the deceased or the victim of a crime. Speaking on this subject in ***Dalip Singh v. State of Punjab (AIR 1953 SC 364)***, Vivian Bose.J., stated as follows,

"(26). A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high & there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

- Duraisamy (P.W.3) is the adjacent land owner and while he was working in his land, he heard the commotion and saw the occurrence. It is a common feature in villages for relatives to own lands contiguously. Hence, the presence of Duraisamy (P.W.3) in his lands situate near to that of P.W.1 cannot be considered as unusual.

(d) P.Ws.2 and 3 have not stated that A3 and A4 had attacked P.W.1 on his left shoulder, whereas, P.W.1 has stated that A3 and A4 had attacked him on his left shoulder.

Our Reasoning:

- In our opinion, this is not at all a discrepancy, because, it is not necessary for the ocular witness to say exactly, where all the victim was attacked by the assailants.

<https://hcservices.ecourts.gov.in/hcservices/> The evidence of P.W.1, P.W.3, P.W.4 and P.W.5 are parrot like and therefore, not worthy of acceptance.

**Our Reasoning:**

- It is true that parrot like evidence will arouse suspicion in the mind of the Court. However, in a short incident of this nature, where four persons attacked the victim and thereafter ran away, all the witnesses, who had seen the occurrence will have to say only this much and nothing more.

(f) The Investigating Officer has stated that there is no prohibition case registered against the accused and therefore, the motive alleged by P.W.1 has been falsified.

Our Reasoning:

- It is indeed very unfortunate that a Sessions Judge in Tamil Nadu is ignorant of the fact that Law & Order and Crime police will not register cases for prohibition offences like, illicit distillation of liquor. There is a Special Wing called Prohibition Enforcement Wing in the State, which will only take up such cases. Therefore, Dinesh Kumar (P.W.12) the Investigating Officer, in this case, attached to Thuraiyur Police Station has rightly stated that there is no prohibition case against A1 to A4 in his station.
- The Sessions Judge failed to note that along with Section 313 Cr.P.C. statement, Ashokkumar (A2) has enclosed a letter addressed by his wife Sangeetha to the Deputy Inspector General of Police, wherein, it is stated that her husband was illicitly distilling arrack three years back and had stopped the trade. This Court cannot close its eyes to this letter which was produced by A2 himself. This letter shows that there was nexus between A2 and illicit brewing.

(g) A1 has given a complaint, based on which, a case in Thuraiyur Police Station Crime No.386/2011 has been registered against Kumar (P.W.1) and that has been suppressed by the police.

Our Reasoning:

- It is seen that, in the Section 313 Cr.P.C. statement of A1, he has stated that he had done centring work for P.W.1, for which, wages was due to him, then on 17.09.2011 around 6.15 p.m., while A1 was tending cattle, he (A1) saw P.W.1 and asked him for the wages; at that time, P.W.1 tried to attack him (A1) with a knife; he (A1) sustained injuries in his left palm; P.W.1 threatened to kill him (A1) and left the place; he (A1) got himself admitted to the Government Hospital, Thuraiyur for the injury and on 18.09.2011, the police recorded his (A1's) statement and registered a case in Crime No.386/2011. He (A1) has also enclosed the discharge summary along with his Section 313 Cr.P.C. statement, which does not show any injury to him. However, in the cross examination of P.W.1, A1 has suggested that he grappled with P.W.1 and both of them rolled on the ground. However, he has not questioned a word to Dr.Meiyappan (P.W.8), who was on duty from 7.00 p.m., onwards in the Government Hospital, Thuraiyur and who had treated P.W.1 for the injuries, nor did A1 choose to even file the Accident



- The injuries suffered by P.W.1 could not have been sustained, while rolling on the ground with A-1, because, the injuries are incised wound injuries and the measurement have also been given in Ex.P.4. Hence, the theory of A1 that it was P.W.1, who attacked him is patently false.

(h) The police have closed the complaint given by A1 in Crime No.386/2011, as it was found to be false.

Our Reasoning:

- when the case was committed to the Court of Session, A1 did not raise any objection with regard to Crime No.386/2011 and did not ask for simultaneous trial of both cases in terms of ***Nathilal and others vs. State of U.P., (1990 Supp SCC 145)***, because he knew that the said case has been closed as false by the police.

(i) The evidence of the Investigating Officer that he examined A1 when he appeared before him for complying with the conditions of anticipatory bail and pursuant to the statement given by A1, he discovered the material objects, viz., M.Os.1 to 4 appears hilarious, is the finding of the Sessions Judge in paragraph No.13 of his judgment.

Our Reasoning:

- It is indeed very sad that the Sessions Judge was not even aware of the judgment of the Supreme Court in ***Inspector of Police v. Bala Prasanna (2008 AIR SCW 5600)***, wherein, the Supreme Court has held that even an accused, who is on bail, will be deemed to be in the custody of the Investigating Officer under Section 27 of the Evidence Act, if he comes to report before the police pursuant to the bail order;

(j) P.W.1 has admitted that he was using a sickle when he was working in the field and therefore, P.W.1 would have assaulted A1.

Our Reasoning:

- P.W.1 has candidly stated that he was cutting grass and watering the crops in the field. Therefore, P.W.1 was justified in having a sickle for his work. In the absence of A1 producing any satisfactory material to show that he was injured, it was not open to the trial Court to have drawn such a weird inference.

9. Thus, looked at from any angle, the judgment of acquittal passed by the trial Court is perverse and ill-conceived.

10. The Hon'ble Supreme Court in ***State of Rajasthan v. N.K. The Accused (2000 (5) SCC 30)*** has held as under:

"It is true that the golden thread which runs throughout the cobweb of criminal jurisprudence as administered in India is that nine guilty may escape but one innocent should not suffer. But at the same time, no guilty should escape unpunished once the guilt has been proved to hilt. An unmerited acquittal does no good to the society. If the prosecution has



succeeded in making out a convincing case for recording a finding as to the accused being guilty, the court should not lean in favour of acquittal by giving weight to irrelevant or insignificant circumstances or by resorting to technicalities or by assuming doubts and giving benefit thereof where none exists. A doubt, as understood in criminal jurisprudence, has to be a reasonable doubt and not an excuse for a finding in favour of acquittal. An unmerited acquittal encourages wolves in the society being on the prowl for easy prey, more so when the victims of crime are helpless females."

11. In our opinion, the trial Judge has smelt doubt for the sake of smelling doubt on every aspect of the prosecution case and in that process, has allowed the guilty to escape from the clutches of law.

12. In the result, the criminal appeal is allowed and the judgment in S.C.No.195 of 2012 is set aside and all the four accused are convicted for the offence under Section 307 r/w 34 IPC.

13. As regards the sentence, this Court directs the accused to be present before this Court on 02.04.2019.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS I)

To

1. The III Additional District and Sessions Judge,
The III Additional District and Sessions Court,
Tiruchirappalli

2.The Inspector of Police,
Thuraiyur Police Station, Tiruchirappalli District

3.The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai.

Copy To:

1. The Section Officer, (2 copies)
Criminal Section, Madurai Bench of Madras High Court, Madurai.
- 2.The Court Manager,
Madurai Bench of Madras High Court, Madurai.
- 1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-56628[F])

Order made in

Cr1.A. (MD)No.60 of 2017
26.03.2019