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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
12.02.2019	28.02.2019

CORAM:
THE HONOURABLE MR.JUSTICE **P.N.PRAKASH**
AND
THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**
CRL.A[MD].No.293 of 2016

The State Rep by
The Public Prosecutor,
High Court Madras,
[Uvari Police Station, Crime No.61 of 2013]
: Appellant/Complainant

Vs.

1.Madhan
2.Anand
3.Chithiraboopathy : Respondents/Accused Nos.1 to 3

PRAYER: Appeal is filed under Section 378 of the Code of Criminal Procedure against the Judgment and conviction dated 28.01.2016 made in S.C.No.472 of 2013, on the file of the Third Additional District and Sessions Court, Tirunelveli.

For Appellant : Mr.R.Anandharaj
Additional Public Prosecutor

For Respondents : Mr.K.Sivabalan

JUDGMENT

P.N.PRAKASH, J.

The appellants are accused Nos.1 to 3 in S.C.No.472 of 2013, on the file of the Third Additional District and Sessions Court, Tirunelveli. The Trial Court framed as many as three charges, as detailed below.

Charge	Accused	Penal Provisions
1	1	449 IPC
2	1	302 IPC
3	2 and 3	302 r/w 34 IPC

By Judgment dated 28.01.2016, the Trial Court has acquitted all the three accused of the charges framed against them. Challenging the said conviction and sentence, the State has come up with this



Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:-

The deceased - Muruganandham misbehaved with Chithiraboopathy, [A-3], the wife of Anand [A-2] and the sister of Madhan [A-1] and continued making advances at her ignoring the counsel of elders. Infuriated at that, it is alleged that Madhan [A-1], Anand, [A-2] and Chithiraboopathy [A-3] decided to get rid off Muruganandham, pursuant to which, on 03.05.2013, around 12.00 in the midnight, when Muruganandham was sleeping in the hall of his house, Anand [A-2] and Chithiraboopathy [A-3] helped Madhan [A-1] to scale the compound wall of the house of Muruganandham. Madhan [A-1] entered into the house and killed Muruganandham. On a written complaint lodged by Alagananthi [PW-1], the mother of Muruganandham, Rajendran [PW-15], the Special Sub-Inspector of Police registered a case in Crime No.61 of 2013, under Sections 452 and 302 of the Indian Penal Code, on 04.05.2013, at 02.30 AM and prepared the First Information Report [EX-P12]. The investigation of the case was taken over by Sivraj Pillai [PW-18], [who, hereinafter, shall be referred to as "the Investigating Officer"]. The I.O went to the place of occurrence and prepared the Observation Mahazar [EX-P3] and Rough Sketch [EX-P16]. The I.O conducted inquest over the dead body of the deceased between 04.30 AM and 06.30 AM, on 04.05.2013 and the inquest report was marked as EX-P17. He despatched the dead body for postmortem.

2.2. Dr.A.Selvamurugan [PW-16] conducted autopsy on the body of the deceased and issued the postmortem certificate [EX-P13], in which he has noted as follows:-

1. Laceration with abraded margins of size 7 X 2 CM X bone deep seen in right side of forehead. On dissection underlying right side of frontal bone fractured and found in multiple pieces.

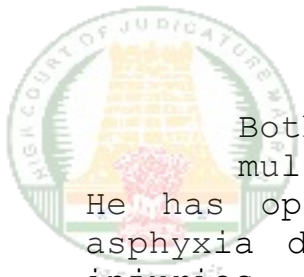
2. Laceration with abraded margins of size 2 X 1 X 1 CM seen near right eye.

3. Laceration with abraded margins of size 8 X 2 X 2 CM extending from root of nose to right cheek on dissection underlying nasal bone and right maxilla fractured and found in multiple pieces.

4. Laceration with abraded margins of size 2.5 X 1 X 2 CM seen in inner aspect of left eye near eyebrow. It is in line with injury No.3. On dissection underlying lower part of left side of frontal bone fractured and found in multiple pieces.

5. Laceration with abraded margins of size 5 X 1 X 2 CM seen in upper lip near nose. On dissection underlying upper jaw bone fractured and found in multiple pieces.

<https://hcservices.ecourts.gov.in/hcservices/> On dissection of head : Thin subarachnoid haemorrhage seen in both temporo parietal region.



Both anterior cranial lossa fractured and found in multiple pieces".

He has opined that the deceased would appear to have died of asphyxia due to aspiration of blood as a consequence of facial injuries.

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2.3. On the information provided by Kamalakannan, [PW-5], on 05.05.2013, the Investigating Officer arrested Anand [A-2] on 06.05.2013, at 07.00 AM and his wife - Chithiraboopathy [A-3] and recorded their statements. On their confession, he recovered an Iron Rod [MO-1] from their house. Thereafter, he arrested Madhan [A-1] at 11.00 AM on the same day. He recovered a blue colour faded Jeans Pant [MO-3] and a black colour Baniyan [MO-4] under the cover of a mahazer [EX-P9]. He also recovered a Bajaj Discover Motorcycle [MO-2] under the cover of mahazar [EX-P8]. In the Police Station, Alagananthi [PW-1] Gangatharan [PW-2] and Selvananthi [PW-3] identified Madhan [A-1] as the person, who jumped into their house and attacked Muruganantham. The I.O recorded the statements of the necessary witnesses, including the doctor, who conducted autopsy.

2.4. After completing the investigation, the Investigating Officer filed final report in PRC.No.31 of 2013 before the learned Judicial Magistrate, Valliyoor. On the appearance of the accused, the provisions of Section 207 of the Code of Criminal Procedure were complied with and the case was committed to the Court of Session in S.C.No.472 of 2013 and made over to the III Additional District and Sessions Court, Tirunelveli. The Trial Court framed charges against the accused, as detailed in Paragraph No.1 supra. When questioned, the accused pleaded "not guilty". To prove the case, the prosecution examined 18 witnesses, marked 20 exhibits and 8 material objects. No witness was examined on the side of the accused nor any document marked. When the accused were questioned about the incriminating circumstances appearing against them, they denied the same. The Trial Court, after considering the evidence on record and hearing either side, by Judgment dated 28.01.2016, has acquitted all the three accused. The State is, therefore, before this Court in this Criminal Appeal.

3. Heard the learned Additional Public Prosecutor appearing for the State and the learned counsel appearing for the respondents.

4. While dealing with an appeal against acquittal, this Court is required to bear in mind the guidelines issued by the Supreme Court in various decisions, which have been referred to in **V.Sejappa Vs. State [2016 (12) SCC 150]**, the relevant portion of which reads as under:-



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:-

"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

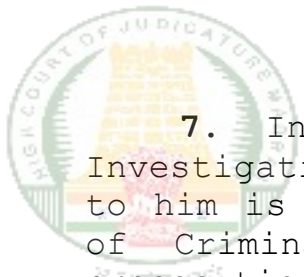


court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and (iv)

Merely because the appellate court on re-appreciation 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."

5. In this case, there are three witnesses, namely, Alagananthi [PW-1], the mother of Muruganantham, Selvananthi [PW-3], the sister of Alagananthi [PW-1] and Shanmuga Tharani [PW-7], the daughter of Selvananthi [PW-3]. All these three witnesses were living along with Muruganandham in the house, where the occurrence had taken place around 12.00 midnight on 03.05.2013. In the complaint [EX-P1], given by Alagananthi [PW-1], she has stated that she was sleeping with the others in the bedroom and her son was sleeping in the hall. Around 12.00 noon, in the midnight, she heard a loud noise from the adjacent room and therefore, she woke the others and went to the hall. From the hall, she saw a person, jumping over the compound wall with a knife and fleeing. She has not given any description of the said person, but, has stated that she can identify him, if seen. She saw her son with cut injuries on the bed and thereafter, she called her brother Gangatharan [PW-2] for help. At the instance of Gangatharan [PW-2], 108 Ambulance was called and the Paramedics in the Ambulance declared that Muruganandham was dead.

6. Thus, it is clear that as on 03.05.2013, the police were not able to identify who the assailant was. In the evidence of the Investigating Officer, he has stated that he received information about the involvement of Madhan [A-1], Anand [A-2] and Chithiraboopathy [A-3] on 05.05.2013, after examining Kamalakannan [PW-5], a neighbour. According to the Investigating Officer, on 06.05.2013, he arrested all the three accused. In this case, no test identification parade was conducted for Alagananthi [PW-1], Selvananthi [PW-3] and Shanmuga Tharani [PW-7] to identify Madhan [A-1]. The Investigating Officer has stated, in his examination-in-chief, that after he arrested Madhan [A-1], Anand [A-2] and Chithiraboopathy [A-3], the witnesses came to the Police Station and saw Madhan [A-1] and stated that he was the person, whom they saw on that night.



7. In the opinion of this Court, the evidence of the Investigating Officer about the statement given by the witnesses to him is inadmissible in evidence under Section 162 of the Code of Criminal Procedure. Even according to the case of the prosecution, the involvement of Madhan [A-1], Anand [A-2] and Chithiraboopathy [A-3] came to light, only after the examination of Kamalakannan [PW-5], on 05.05.2013. If that is so, how did the names of Madhan [A-1], Anand [A-2] and Chithiraboopathy [A-3] figure in column No.9 of the inquest report [EX-P7], that was made on 04.05.2013?. That apart, Kamalakannan [PW-5] turned hostile. It is true that the inquest is conducted by the police under Section 174 of the Code of Criminal Procedure to find out the apparent cause of death and it is not necessary for the police to narrate all the minute facts. While that being so, when the police have narrated minute facts in the inquest report itself on 04.05.2013, their case that they learnt about the individual overt acts of Madhan [A-1], Anand [A-2] and Chithiraboopathy [A-3], after enquiring Kamalakannan [PW-5], on 05.05.2013 and after the arrest of the trio on 06.05.2013 stands belied.

8. All these facts have been taken into consideration by the Trial Court while acquitting the accused. It is true that the failure to conduct the test identification parade in a given case will not *ipso facto* vitiate the dock evidence. However, in the peculiar facts and circumstances of the case, when Alagananthi [PW-1] has stated in the complaint [EX-P1] that she saw a man with a knife jumping over the compound wall, whom she can identify, the test identification parade should have been conducted to fix the identity of the person. That apart, Alagananthi [PW-1] has stated in the complaint that the man was carrying knife. But, it is the case of the prosecution that Madhan [A-1] had attacked Muruganantham with iron rod [MO-1], which is a blunt instrument and it may not cause the injuries that have been noted by the postmortem doctor in the postmortem certificate. Even the postmortem doctor has only stated that with a weapon, like MO-1 death can be caused, but, has not stated that MO-1 could cause the injuries that were found on the body of the deceased.

9. In such view of the matter, we do not find any infirmity in the Judgment of acquittal recorded by the Trial Court warranting interference. Therefore, the Criminal Appeal is dismissed.

Sd/-

Assistant Registrar (CS-II)

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To

1.The Third Additional District and Sessions Court, Tirunelveli.

2.The Judicial Magistrate, Valliyoor, Tirunelveli District

3.-Do-Through The Chief Judicial Magistrate, Tirunelveli

4.The Inspector of Police,
Uvari Police Station,
Tirunelveli District.

5.The Public Prosecutor,
High Court Madras.

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

Copy to

The Record Keeper, (2 copies)
Vernacular Section, Madurai Bench of Madras High Court,
Madurai.

+1 cc to Mr.K.Sivabalan , Advocate SR.No.51118

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**JUDGMENT MADE IN
CRL.A[MD] .No.293 of 2016
28.02.2019**

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