



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2019

CORAM:

The HON'BLE MRS.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE
AND

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI.A.(MD) No.318 of 2016

Pandi @ Palpandi

: Appellant/P.W.2

Vs.

1. State rep. by
The Inspector of Police,
Masarpatti Police Station,
Tuticorin District.
(Crime No.72/2014)

: 1st Respondent/Complainant

2. Sivaperumal

3. Subbaiah

: Respondent 2 &3/Accused 1& 2

PRAYER: Appeal filed under Section 372 of the Criminal Procedure Code, to call for the records pertaining to S.C.No.179 of 2015, on the file of II Additional Sessions Judge, Tuticorin dated 04.07.2016 and to set aside the acquittal by convicting the accused persons.

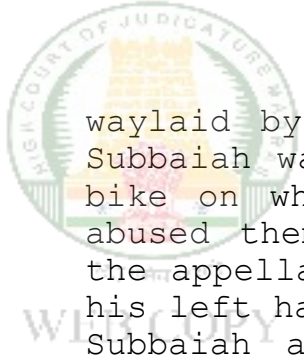
For Appellant : Shri.Veera Kathiravan, Senior Counsel
for Shri.K.Vinayagan
For Respondents : Shri.S.Chandrasekar
Additional Public Prosecutor for R1
: Shri.V.Kathirvelu, Senior Counsel
for Shri.Antony S.Prabahar for R2 & R3

JUDGMENT

**(Judgment of the Court was delivered by
G.R.SWAMINATHAN, J.)**

The injured witness/P.W.2 has preferred this appeal against the judgment of acquittal dated 04.07.2016 in S.C.No.179 of 2015 passed by the learned II Additional District and Sessions Judge, Tuticorin. By the said judgment, the learned Trial Judge acquitted the respondents 2 and 3 herein/accused of the offence with which they were respectively charged.

2.The accused had enmity with the appellant over the grazing of the crops on the land belonging to the appellant by their cattle. The deceased was working in the field of the appellant. Because of this motive, on 26.06.2014 at about 02.00 p.m, when the appellant was riding his bike along with the deceased Palpandi in the pillion on the south-north cement road on the western side of Murugasen Match Box Office situated at Thappathi Village, they were



waylaid by the accused. Sivaperumal was armed with Aruval while Subbaiah was armed with Centring Rod. The accused pushed down the bike on which the appellant and the deceased were travelling and abused them in filthy language. Thereafter, Sivaperumal attacked the appellant with Aruval which was prevented by the appellant with his left hand. The appellant suffered cut injury on his left wrist. Subbaiah attacked the deceased Palpandi with centring rod while Sivaperumal attacked Palpandi on the left side of his neck, head and also left hand. Palpandi suffered instantaneous death. Crime No.72 of 2014 was registered on the file of Masarpatti Police Station, Tuticorin District. After investigation, final report was laid. The accused were charged for the offences under Sections 341, 294(B) and 302 r/w 34 I.P.C. Palpandi was additionally charged with the offence under Section 307 I.P.C. It was taken on file and committed to the learned II Additional District and Sessions Judge, Tuticorin. The plea of the accused was one of total denial and they claimed to be tried. After trial, the learned Trial Judge acquitted the accused of the offences with which they were charged. The State did not file any appeal challenging the judgment of acquittal. It was only PW.2, the injured witness who has filed this appeal.

3. Heard the learned Senior counsel appearing for the appellant who took us through the deposition of all the material witnesses and contended that the Trial Court has not correctly appreciated the evidence. It is true that the defence has brought out a few discrepancies and minor contradictions in the evidence. But then, as held in **Yogesh Singh V. Mahabeer Singh and others** reported in **2016 (4) Crimes 121 (SC)**, they should not be given undue emphasis. The test is whether the evidence on record inspires confidence in the mind of the Court. In this case, the injured witness has convincingly spoken about the role played by the accused. The learned senior counsel further submitted that if the evidence of P.W.2 is believed, the discrepancies deserve to be ignored and the judgment of acquittal reversed.

4. Per contra, the learned senior counsel appearing for the second and third respondents/accused contended that the impugned judgment is a well considered one and that it does not warrant any interference. The plenitude of power available to the Court hearing an appeal against acquittal is the same as that available to a court hearing an appeal against an order of conviction. But, however, the court hearing an appeal against acquittal, will not interfere solely because a different possible view may arise from the evidence. The Supreme Court in the case of **C. Anthony v. K.G Raghavan Nair [(2003) 1 SCC 1]** has observed that while hearing an appeal against an order of acquittal, if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate court should not disturb the finding of the trial Court. He wanted this Court to dismiss this appeal.



5. The learned Additional Public Prosecutor appearing for the first respondent submitted that even though the State has not filed any appeal, he would adopt the submissions of the learned senior counsel appearing for the appellant.

6. After carefully considering the rival contentions, We are of the view that the impugned judgment does not warrant any interference for the reasons set out hereinafter.

7. As per the prosecution case, the occurrence had taken place on 26.06.2014 at about 02.00 p.m near Murugasen Match Box Office in Thappathi village. According to the appellant, he was riding the bike while the deceased was in the pillion. The accused waylaid and attacked them with deadly weapons. The appellant was the first person to come under attack, but he warded it off with his left hand and in the process, he suffered a cut injury on his left wrist. The pillion rider Palpandi came under a more severe attack and he died on the spot. Ex.P1/Complaint was given by P.W.1 who also claims to be an eye witness. Ex.P.19/FIR was registered on that basis.

8. According to P.W.1, the body was sent in an ambulance to the hospital and the Police personnel came to the scene of occurrence. They only took him to the Police Station. When Ex.P1/Complaint was recorded in the Police Station, it was around 07.00 p.m. Thereafter P.W.1 went to Ettayapuram Government Hospital. P.W.5/Marimuthu also signed as an attesting witness in the complaint. According to Marimuthu, the complaint was lodged at around 03.00 p.m on 28.06.2014. As per Ex.P.19/FIR, the information was received at the Police Station at 15.00 hours i.e., 03.00 p.m. and entry was made in the general diary at the same time. Thus, there is a clear discrepancy between the testimonies of the informant and that of the attesting witness with regard to the time when the First Information Report was registered. P.W.2 claims that when he and the deceased were riding the bike, they were waylaid and attacked by the accused. P.W.2 went to his house after the occurrence and he was taken to Government Hospital, Ettayapuram and thereafter he took treatment in a private hospital i.e., Venkateswara Hospital, Kovilpatti. Ex.P.15/Accident Register indicates that P.W.2/Appellant herein was admitted at around 3.05 p.m. with a deep cut injury on his left forearm. Though, it has been mentioned in the accident register that intimation to police was given, there is no explanation from the prosecution as to what happened to the police intimation. The learned Senior Counsel appearing for the second and third respondents would draw our attention to the entry made in Ex.P.15/the discharge summary issued by the Venkateswara Hospital. In the said discharge summary, it is mentioned that P.W.2 was attacked at around 01.30 p.m. on 28.06.2014 by known persons near his house at Thappathi and was initially treated at Government Hospital, Ettayapuram. In the cross examination, P.W.2 admitted that even before he was medically treated, he was examined by the police. The learned Senior Counsel appearing for the second and third respondents pointed out that in the discharge summary issued by the Venkateswara Hospital, the scene of occurrence is said to be

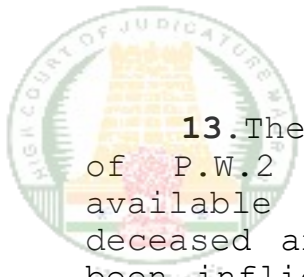
near the appellant's house, while according to the prosecution, the scene of occurrence was near Murugasen Match Box Office.

9. The wife of P.W.2 was examined as P.W.4. She cryptically deposed that on 28.06.2014 at about 02.00 p.m. her husband came home with a cut injury and that he was taken in their car to Government Hospital, Ettayapuram and since he could not be treated there, he was taken to Venkateswara Hospital, Kovilpatti. Except this, P.W.4 does not depose anything more. If the occurrence had taken place as alleged by the appellant, he would have certainly spoken about it to his wife/P.W.4. The silence of P.W.4's testimony on this aspect cannot be ignored.

10. Ex.P.19/FIR, which according to the prosecution was registered at 03.00 p.m. reached the Jurisdictional Magistrate only at 10.55 p.m. It is not in dispute that the Court was at a distance of 25 Kilometers and could be reached in less than an hour. There is admittedly no explanation for the delay. Ex.P.17 is the wound certificate. It was marked through P.W.10/Dr.Thulasi Lakshmi. She was the medical officer who was on duty in Government Hospital, Ettayapuram. She conducted the autopsy on the dead body of Palpandi on 29.06.2014. She also examined the appellant/P.W.2 and issued Ex.P.15 and referred him to Government Hospital, Kovilpatti vide Ex.P.16/referral slip. M.O.1/Aruval was shown to her. P.W.10 admitted that the cutting edge of M.O.1 would be around 8 to 10 cms and that the 10 to 20 cms injury mentioned in the postmortem report could not have been caused with the cutting edge of M.O.1/Aruval. It was categorically admitted by her that there is no injury either on P.W.2 or on the deceased Palpandi to match the injury that could have been caused by M.O.1/Aruval or M.O.2/ Centering Rod.

11. In this case, the deceased and P.W.2 had come in a bike. They were waylaid and attacked. The accused had pushed down the bike and thereafter attacked the appellant and the deceased. But the Investigating Officer did not bother to seize the vehicle. Of course, if the accused had come in a bike and the same was not seized, it would be absolutely fatal to the prosecution case. Though the non-seizure of the vehicle of the victim is not that serious, still some significance has to be attached to the said circumstance. The bike does not even figure in the sketch prepared by the Investigating Officer. No one knows what happened to it. P.W.2 would claim that the bike was sold away when he was in hospital. The learned Trial Judge had taken this also into account. In the scene of occurrence, three pairs of chappals were found. The police did not seize the same.

12. During the cross examination, it was elucidated that P.W.2 was a histroy-sheeter. It was further admitted that an attempt to murder case was registered against the deceased Palpandi as well as the appellant under Section 307 I.P.C. and that they were finally acquitted. The Court below came to the conclusion that apart from the accused herein, the deceased had other enemies.



13. The Court below also came to the conclusion that the conduct of P.W.2 was highly suspicious. Independent witnesses though available were not examined. The injuries on the body of the deceased and that of P.W.2 did not correspond to what could have been inflicted by M.O.1 and M.O.2. Taking note of these aspects, the Court below came to the conclusion that the prosecution failed to establish the case against the accused beyond reasonable doubt.

14. We are of the view that the reasons given by the Court below cannot be said to be improbable. We decline to interfere with the impugned judgment acquitting the accused/respondents 2 and 3. The Criminal Appeal stands dismissed.

sd/
Assistant Registrar(records)

/True Copy/

Sub Assistant Registrar

To

1. The II Additional Sessions Judge, Tuticorin.
2. The Inspector of Police,
Masarpatti Police Station, Tuticorin District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:
The Section Officer,
Criminal Section, (2 Copies),
Madurai Bench of Madras High court, Madurai

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12.04.2019

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