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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.06.2019

Pronounced on : 05.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P.(MD)No.6662 of 2019

in

Crl.A.(MD)No.SR11736 of 2019

and

Crl.A.(MD)No.SR11736 of 2019

State Rep. By
The Inspector of Police,
Puthiyamputhur Police Station,
Thoothukudi District.
Crime No.26 of 2014

... Appellant / Complainant

Vs.

Subbaiah @ Chinnaraj

... Respondent / Accused

Prayer in Crl.O.P.(MD)No.6662 of 2019: Petition filed under Section 378(3) of the Code of Criminal Procedure seeking leave to prefer an appeal against the order of acquittal dated 09.03.2016 in S.C.No.382 of 2015 on the file of the Sessions Court (Mahila Court - Fast Track Court), Thoothukudi District.

Prayer in Crl.A.(MD)No.SR11736 of 2019: Appeal filed under Section 378(1)(b) of the Code of Criminal Procedure against the judgment dated 09.03.2016 made in S.C.No.382 of 2015 on the file of the Sessions Court (Mahila Court - Fast Track Court), Thoothukudi District.

For Petitioner

: Mr.S.Chandrasekar

Additional Public Prosecutor

ORDER

B.PUGALENDHI, J.,

The respondent herein is the sole accused in Crime No.26 of 2014 on the file of Puthiyamputhur Police Station, Thoothukudi District and he was tried before the Mahila Court - Fast Track Court, Thoothukudi District in S.C.No.382 of 2015 for the offence punishable under Section 302 IPC. The learned trial Judge, by judgment dated 09.03.2016, holding that the prosecution has not proved the case beyond reasonable doubt, acquitted the respondent. As against the order of acquittal, the prosecution preferred this



appeal and also had filed the present Criminal Original Petition seeking leave of this Court.

2. The brief facts of the case, as projected by the prosecution, are as follows:

2.1. The deceased in this case is one Subbulakshmi @ Subbammal, aged about 68 years. Her daughter, namely, Ellammal / defacto complainant is the wife of the respondent herein / accused. It appears that there was a strained relationship between the couple and the defacto complainant left the matrimonial home and started living with her parents. On 09.02.2014, at about 09.00 pm, the accused came to their house and asked the defacto complainant to come with him. It is alleged that the deceased refused to send her daughter along with the accused, since the accused was in a drunken mood. Infuriated by the same, the accused used filthy languages and hurled bricks and tile pieces on the deceased, in which, the deceased sustained injuries and died on the spot.

2.2. Based on the complaint lodged by the defacto complainant, a case in Crime No.26 of 2014 came to be registered for the offence punishable under Section 302 IPC on the file of the Puthiyamputhur Police Station. The Investigation Officer, on completion of the investigation, has filed the final report on 24.03.2014, before the learned Judicial Magistrate No.1, Thoothukudi District in P.R.C.No.21 of 2014, which was later committed to the Sessions Judge, Mahila Court - Fast Track Court, Thoothukudi in S.C.No.382 of 2015.

2.3. Before the trial Court, on the side of prosecution, as many as 11 witnesses were examined, besides marking 11 documents and 5 material objects. The trial Judge, on conclusion of trial, holding that the prosecution failed to prove the case beyond reasonable doubt, acquitted the accused. The available evidences from the prosecution evidence are as follows:

(i) PW1 is the defacto complainant and according to her, due to family dispute, she left the matrimonial house and used to reside with her parents. On 09.02.2014, at about 09.00 pm, when she along with her son, who is a special child and mother / deceased were standing in front of their house, the accused came there and asked the defacto complainant to come with him. Since the accused was in a drunken mood, her mother / deceased refused to send the defacto complainant and therefore, the deceased used filthy languages and hurled bricks and pieces of tiles on the deceased, in which, the deceased sustained injuries in the head and abdomen portion and she died on the spot.

(ii) PW2 is the uncle of PW1 and according to him, on 09.02.2014, at about 11.00 pm, the deceased's brother, one <https://hsr.sscs.gov.in/hsr-services> him over phone and intimated that the accused hurled stones on the deceased and the deceased died on the spot. After completing the postmortem, they received the body on the



next day morning.

(iii) PW3 is the brother of the deceased and he has spoken about the strained relationship between the deceased and her daughter with the accused. He has also stated that one Kengaraj from the locality, has intimated him over phone about the occurrence that took place on 09.02.2014.

(iv) PW4 is a hearsay witness, who has spoken about the occurrence that took place on 09.02.2014.

(v) PW5 is the witness for the observation mahazar [Ex.P3].

(vi) PW6 is the then Village Administrative Officer, who witnessed the confession statement of the accused as well as the recovery of MOs 1 & 2.

(vii) PW7 is the Doctor, who conducted postmortem on the body of the deceased. The postmortem certificate is marked as Ex.P7, wherein, the following two injuries have been noted:

i) a contusion of 4 * 3 * 2 cm in the right groin; and

ii) a contusion of 5 * 3 * 2 cm in the right forehead.

The Doctor has deposed that the injuries are simple in nature and gave his final opinion that the deceased would have died about 12 to 24 hours prior to the autopsy, due to heart attack.

(viii) PW8 is the police constable, who delivered the express First Information Report to the Magistrate on 09.02.2014.

(ix) PW9 is the Special Sub-Inspector of Police, who registered the complaint in Crime No.26 of 2014.

(x) PW10 is the Magistrate, who recorded the confession statement of PW1 under Section 164 Cr.P.C.

(xi) PW11 is the Inspector of Police, who conducted the investigation and filed the final report.

3. The learned trial Judge, upon considering the oral and documentary evidence, has held that the prosecution has failed to prove the case beyond reasonable doubt and thereby, acquitted the accused / respondent from the charge. Aggrieved, the State sought leave to file an appeal challenging the acquittal.

4. The learned Additional Public Prosecutor appearing for the petitioner / State has raised the following grounds for the consideration of this Court:

4.1. PW1, when examined in chief and cross on 18.01.2016, has supported the case of the prosecution. In fact, PW1 has supported the complaint lodged by her before the Puthiyamputhur Police Station [Ex.P1], when she was examined on that day.

4.2. The 164 Cr.P.C. statement of PW1 recorded by the Magistrate [PW10] reveals the overt acts of the accused.

4.3. The accused has filed a petition under Section 311 Cr.P.C. and PW1 was recalled nearly 1 ½ months after she was examined in chief and cross fully, where she has changed the services from hsevis.com to hsevis.com and has become hostile, only at the instance of her husband / the accused.

4.4. The evidence of PW6 / Village Administrative Officer



corroborates the confession of the accused as well as the recovery of material objects.

4.5. The trial Court has failed to consider the above aspects and therefore, the learned Additional Public Prosecutor craves leave of this Court.

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5. We have heard the learned Additional Public Prosecutor appearing for the petitioner / State and have perused the documents placed on record.

6. Before dwelling into the merits of the case, since the appeal is filed as against an order of acquittal, it is necessary to bear in mind the principles governing the appeal against acquittal, as laid down by the Hon'ble Supreme Court in **V. Sejappa v. State [(2016) 12 SCC 150]**, wherein the Hon'ble Supreme Court has followed its own decision in **Muralidhar v. State of Karnataka [(2014) 5 SCC 730]**. The guidelines issued in the said decision are extracted hereunder:

"23. ...

... (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*



7. In yet another decision in the case of **Chandrappa Vs State of Karnataka [(2007) 4 SCC 415]**, the Hon'ble Supreme Court has laid down the following general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal:

"(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts on limitation restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

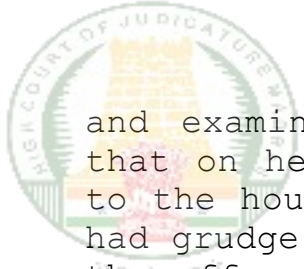
(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court."

8. The defacto complainant [PW1] is the wife of the accused and due to some matrimonial dispute, PW1 started residing with her parents. On the fateful day, it is alleged that the accused came to the residence of the deceased and asked PW1 to come along with him. Since the accused was in a drunken stage, the deceased refused to send her daughter and grandson along with the accused. Infuriated by the same, the accused used filthy languages and hurled bricks on the deceased, in which, the deceased sustained injuries and died on the spot.

9. This version of the prosecution was supported by PW1, who was examined on 18.01.2016. However, on an application filed by the accused under Section 311 Cr.P.C., she was recalled



and examined on 04.03.2016, where she gave a different version that on hearing the news of her mother had fallen down, she went to the house and since the accused was disturbing them often, she had grudge against him and suspecting that he would have committed the offence, implicated him as accused and she did not witness the occurrence.

10. The Doctor [PW7], who conducted autopsy on the body of the deceased has noted down two injuries (cited supra) and has given his final opinion that the deceased appears to have died of Myocardial Ischemia. Other than the two injuries noted down by the Doctor, there was no injury on the body of the deceased and according to the Doctor, these two injuries are possible even if she fell down after suffering the heart attack.

11. In the light of the guidelines laid down by the Hon'ble Apex Court in deciding the cases of appeal against acquittal (cited supra), with the available evidence, this Court does not find any perversity or illegality in the judgment passed by the trial Court warranting any interference from this Court.

12. In such view of the matter, we are not inclined to entertain this leave petition and the same is accordingly, dismissed. Consequently, the criminal appeal, which is in SR stage, stands rejected.

Sd/-

Assistant Registrar (AD-II)

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Sub Assistant Registrar (CS)

To

The Sessions Judge,
Mahila Court - Fast Track Court,
Thoothukudi District.

Copy to:

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

Cr1.O.P. (MD) No. 6662 of 2019
in
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and
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