



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE **T.RAJA**

and

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

Cr1.A. (MD)No.91 of 2018

Irulappan ... Appellant/Defacto Complainant

versus

1. The State
Rep. by the Inspector of Police,
Rajathani Police Station,
Theni District.
(Crime No.393 of 2010) ... 1st Respondent/Complainant

2. Madurai Veeran

3. Kumutha ... Respondents 2 & 3/Accused No.1 & 2

Criminal Appeal filed against the Judgment dated 27.07.2012 made in S.C.No.121 of 2011 on the file of the Additional District and Sessions Court, Periyakulam, Theni District.

For Appellant : Mr.J.Sulthan Basha
for M/s.Ajmal Associates

For R1 : Mr.R.Anandharaj
Additional Public Prosecutor

For R2 and R3 : No appearance

JUDGMENT

[Judgment of the Court was delivered by **B.PUGALENDHI, J.**]

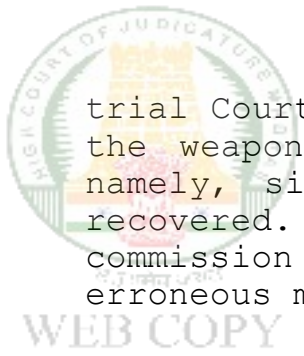
P.W.1, who is the defacto complainant in S.C.No.121 of 2011 on the file of the Additional Sessions Court, Palayamkottai, has preferred a Criminal Revision Petition as against the Judgment dated 27.07.2012 passed by the trial Court in acquitting the accused in S.C.No.121 of 2011. As per the order of the Full Bench of this Court, this Criminal Revision filed by P.W.1 was converted as Criminal Appeal and posted before this Court for final disposal.



2. The case of the prosecution is that P.W.1 is the father of the deceased Murugan. The deceased Murugan was working in Military at Chandigarh and his wife died four years back and thereafter, he returned to his native place and living with P.W.1 and P.W.2. On 07.09.2010, at about 10.00 a.m., he went to answer natural calls after informing P.W.1 and thereafter, he did not return. On 08.09.2010, at about 6.30 a.m. P.W.1 was informed that his son was found dead near the lake. P.W.1 and P.W.2 rushed to the spot and found that their son Murugan was burnt and killed at the lake and through M.O.No.8 - chappals and M.O.No.2-ring, they have identified Murugan as that of his son. The dead body was taken to the Government Hospital and in the Accident Register, it has been mentioned as "patient brought dead with 90% burns on 08.09.2010 at 12.35 p.m. with destruction of (NC) and the Accident Register was marked along with Ex.P11. The Doctor P.W.11, who conducted postmortem has noted down the injuries and gave his final opinion in Ex.P13 that the deceased appeared to have died due to compression of neck associated with multiple injuries (cut injuries, head injuries and chest injury). On receipt of the complaint from P.W.1, on 08.09.2010, P.W.18-Sub Inspector registered a case in Cr.No.393 of 2010 for the offence under Section 302 IPC. The Investigating Officer, in the presence of panchayatadars, has also conducted an inquest. During the inquest, the Panchayatadars came to a conclusion that the deceased, who lost his wife four years back, was living with her parents and he was also having an intimacy with several women and due to that, he would have been murdered by some other persons. After a month, on 07.10.2010, the accused 1 and 2 said to have appeared before the Village Administrative Officer-P.W.10 and gave an Extra Judicial Confession Statement as if that the deceased was having an intimacy with the accused No.2 and on date of occurrence, i.e. on 07.09.2010, the accused No.1 found the deceased in an embarrassed position with accused No.2 and therefore, he attacked the deceased until his death and thereafter, he along with A2 took the dead body to the nearby lake and burnt the dead body. Thereafter, a sickle and a wooden log with bloodstained were also recovered from the house of the accused No.1. Based on extra judicial confession statement and the statement of other witnesses, the Inspector of Police filed a final report as against the accused.

3. During the trial, the prosecution had examined 23 witnesses as P.Ws.1 to 23 and marked 22 documents as Exs.P1 to P22 and material objects as M.Os 1 to 17 in support of their case. In conclusion of the trial, the trial Court, on finding that there is no material as against the accused, acquitted the accused from the charges framed against them. As against the order of acquittal, P.W.1-Father of the deceased has preferred the present appeal.

4. Learned counsel appearing for the appellant submits that the evidence of P.W.7, who speaks about the last seen theory and the evidence of P.Ws.1 and 2 have not been properly appreciated by the



trial Court and pursuant to the Extra Judicial Confession Statement, the weapons used by the accused No.I for commission of offence, namely, sickle and wooden log with bloodstained, have also been recovered. Despite the circumstances linking with the accused for commission of offence, the trial Court acquitted the accused in an erroneous manner.

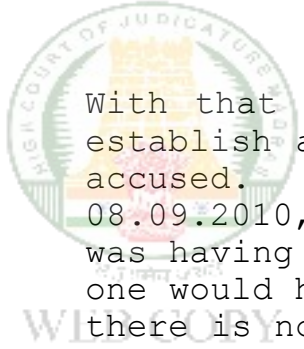
5. We have given its anxious consideration based on the materials available on record.

6. This is a case of appeal against the acquittal. The Honourable Apex Court has held that while dealing with an appeal against acquittal, the appellate court should always be slow in setting aside the trial court judgment and it is trite law that, if, on the same evidence two views are reasonably possible and where the court below takes a view in favour of the accused, the appellate court will not set aside the order of acquittal unless it finds the findings to be perverse, highly unreasonable based on no evidence on record or made in ignorance of relevant evidence on record or for such other reason.

7. Bearing in mind the ratio laid down by the Hon'ble Apex Court in the case of appeal as against the acquittal, we have carefully analysed the available evidence.

8. The evidence available on the side of the prosecution are that of P.W.1 and P.W.2 and that apart, P.W.7 and P.W.8. P.W.1 and P.W.2 are the parents of the deceased. According to P.W.1, his son deceased on 07.09.2010 went out of the home for attending natural calls and thereafter, he did not return, but, on the next day, he was informed that his son was found dead near the lake. Therefore, he went and saw the dead body and thereafter, he lodged the complaint. Except the lodging of complaint, P.W.1 has not stated anything incriminating against the accused in this case. However, P.W.7, who is one of the relatives of the deceased, has stated that on 07.09.2010, the accused came to the house of P.W.1 and took the deceased along with them, but, this theory has been inserted only during the trial. Therefore, the trial Court has disbelieved the evidence of P.W.7, on the grounds that a) he is a relative of P.W.1; b) he was the native of Vadipatti and the occurrence took place at Chathirapatti village; c) though the accused is said to have taken the deceased from the house of P.W.1 on 07.09.2010, these facts have not been stated in the complaint Ex.P16, which was lodged on 08.09.2010 and also for the reason that the evidence of P.W.7, who is said to have stayed in the house of P.W.1, has not been supported by the evidence of P.W.1 and that any of the relative had stayed in the house of P.W.1. on 07.09.2010.

9. That apart from the evidence of P.W.7, the prosecution has also relied on the evidence of P.W.8. P.W.8 gave a statement that the deceased was having an intimacy with the accused No.2.



With that evidence, learned counsel for the appellant attempted to establish a case that there was a motive established as against the accused. However, in the inquest, which was conducted on 08.09.2010, the Panchayattudars unanimously held that the deceased was having intimacy with several women, on the ground of which, some one would have committed the offence. With this available evidence, there is no incriminating materials/evidence implicating the accused for the commission of offence and therefore, the trial Court has also rightly acquitted the accused.

10. When the last seen theory has not been substantiated, again, the motive projected before the trial Court was not even satisfactorily explained and the recoveries said to have been made on the confession statement have also not been properly proved before the trial Court, we do not find any illegality, infirmity or perversity on the appreciation of evidence made by the learned trial Court.

11. Accordingly, the Criminal Appeal fails and the same is dismissed.

Sd/-

Assistant Registrar(AS)

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Sub Assistant Registrar(CS)

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To

1. The Additional District and Sessions Court,
Periyakulam, Theni District.

2. The Inspector of Police,
Rajathani Police Station, Theni District.

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

Copy to

The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-105780[F] dated
19/12/2019)

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KMV(CO)

TR(14.05.2020) 4P 7C

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