



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl. A. (MD) No.276 of 2017

Panchavarnam

... Appellant/P.W.1

Vs.

1.State rep. by Inspector of Police,
Paralachi Police Station,
in Thiruchuli Circle Police Station,
Virudhunagar District.
(In Crime No.124 of 2011) ...1st Respondent/Complainant

2.Anuraman

3.Senbagaraman

4.Pappammal ... Respondents 2 to 4/A1, A3 & A4

Prayer: Criminal Appeal filed under Section 372 of the Criminal Procedure Code, against the judgment of acquittal in S.C.No.165 of 2012 on the file of the Principal Sessions Court, Virudhunagar District at Srivilliputtur dated 23.08.2016.

For Petitioner : Mr.G.Marimuthu

For 1st Respondent : Mr.S.Chandrasekar
Additional Public Prosecutor

For 2nd Respondent : Mr.S.Bharathi

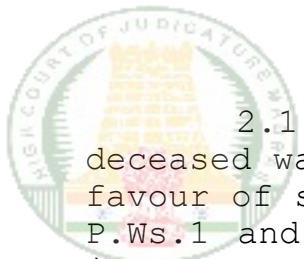
For Respondents 3 & 4 : Mr.S.G.L.Rishwanth

J U D G M E N T

(Judgment of the Court was delivered by **M.SATHYANARAYANAN, J.**)

P.W.1, who is the son of the deceased, is the appellant. A1 to A4 were prosecuted for the commission of offences under Sections 302, 302 r/w 34, 307 and 307 r/w 34 I.P.C. The Court of Principal District and Sessions Judge, Virudhunagar District at Srivilliputtur vide impugned judgment dated 23.08.2016 after full-fledged trial had acquitted A1, A3 and A4 and during the pendency of the Trial A2 died and therefore, the charge against him got abated. Challenging the said judgment of acquittal, he came forward to file this Criminal Appeal.

2. Facts leading to the filing of this Criminal Appeal, relevant for the purpose of disposal of this case, briefly narrated are as follows:



2.1. P.W.1 is the son of the deceased viz., Ambigapathi. The deceased was owning 2 ½ acres of land and the said was sold by A2 in favour of some other person. Therefore, at 9.45 hours on 26.12.2011, P.Ws.1 and 2 were resting on the pial of their house and at this juncture, father of P.W.1 viz., Ambigapathi started castigating Accused No.2 and enraged by the same, A1, who is the son of A2 and A2 son of A3 and A4 wife of A3 came together for the purpose of taking away the life of Ambigapathi and with that common intention A1 attacked Ambigapathi with M.O.1 - Aruval on the left side head, A2 cut him on the left chest and when P.W.1 went there to protect his father, A2 attacked him with M.O.2 on the right hand wrist, right hand index finger and right hand little finger and A3 also attacked P.W.1 below the right hand shoulder and A4 attacked him on the left forearm with tube light holder. Ambigapathi, father of P.W.1 on account of the said attack died on the spot.

2.2. P.W.1, son of the deceased proceeded to Paralachi Police Station and lodged a complaint under Ex.P.1 and based on which, P.W.19, Sub-Inspector of Police registered a case in Crime No.124 of 2011 at about 23 hours on 26.12.2011 for the commission of offences under Sections 307 and 302 I.P.C. The printed F.I.R. was marked as Ex.P.22. Thereafter, P.W.19 despatched the original F.I.R. to the jurisdictional Magistrate and also despatched the copies to the higher officials and also sent P.W.1, who was found injured, through medical memo to Government Hospital, Aruppukottai.

2.3. P.W.20 was Inspector of Police of Thiruchuli Circle and on 27.12.2011 at about 12.05 a.m. reached the scene of occurrence and commenced the investigation. He availed the services of the photographer viz., P.W.10 and took the photographs. The photographs were marked as M.O.3 series. P.W.20 in the presence of P.W.8 and another prepared Observation Mahazar and Rough Sketch marked as Exs.23 and 24 respectively and in the presence of the same witnesses recovered bloodstained earth and sample earth marked as M.Os.7 and 8 under the cover of Mahazar Ex.P.25.

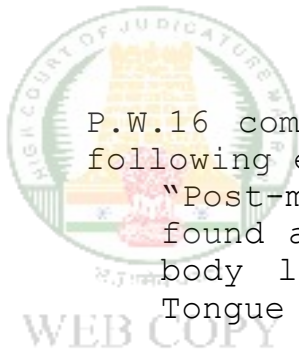
2.4. P.W.20 on 27.12.2011 at about 9.00 hours, conducted inquest in the presence of witnesses and panchayatdars on the body of the deceased and prepared inquest report under Ex.P.26. P.W.20 for the purpose of conducting postmortem on the body of the deceased, through P.W.13, sent the body to Government Hospital, Aruppukkottai along with requisition.

2.5. P.W.16 was the Senior Civil Surgeon of Government Hospital, Aruppukkottai and he received the body of Ambigapathi along with requisition at about 11.45 a.m. on 27.12.2011 and noted the following features:

"Identification and caste marks:

- 1) A black mole left chest.
- 2) A black mole left groin.
- 3) An old scar left knee.

The body was first seen by the undersigned at 12.45 P.M. on 27.12.11. Its condition then was Rigor mortis present all four limbs."



P.W.16 commenced the postmortem at about 12.45 p.m. and noted the following external injuries and on dissection found the following:

"Post-mortem commenced at 12.45 P.M. on 27.12.11. Appearances found at the post-mortem moderately built and nourished male body lies on its back. Arms on the side. Legs extended. Tongue within oral cavity. Eyes closed.

8	8
8	8

External Injuries:

1) An oblique cut injury 5 x 3 x 2 cm left parietal head. 2. An oblique cut injury 12 cm x 5 cm x 7 cm left chest from U/3rd lateral border of sternum to left chest 10 cm below the left clavicle.

Internal Examination : While exploring wound 2 - sternum fractured at the U/3rd lateral border. Inter costal muscles cut opened. A lacerated injury 7 x 3 x 2 cm left upper (NC) of lungs. One litre of blood in the thoracic cavity.

C/S Pale Injury 1 limited upto scalp. No skull bone injury.

Abdomen : Stomach empty intestines bloated with gas.

Liver : 1500 gms C/S pale. Spleen 200 gms C/S Pale.

Kidneys : 100 gms C/S pale. No pelvic fracture.

Heart : 300 gms C/S pale. Skull No fracture membrane intact.

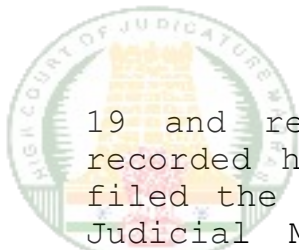
Brain : 1400 gms C/s pale. Spinal column intact. Hyoid bone intact."

P.W.16 has reserved his opinion pending disposal of the viscera report and after receipt of the report gave the final opinion that the deceased would appear to have died of vital organ injury 12 - 24 hours prior to autopsy. The postmortem certificate is marked as Ex.P.17.

2.6.P.W.20 continued the investigation and examined P.Ws.1 to 9 and one Kaalaisamy and recorded their statement under Section 161 (3) Cr.P.C. After postmortem was over, the clothes worn by the deceased viz., M.Os.3 to 7 were despatched to the jurisdictional Magistrate under Form 95. P.W.20 examined Muniammal and Mahaganapathy and recorded their statements. He sent the internal organs and the material objects for chemical examination through the Court of jurisdictional Magistrate.

2.7. P.W.20 came to know that A1 and A2 surrendered before the Court of Judicial Magistrate No.6 and took necessary steps and obtained their police custody on 23.01.2019 and at about 17.30 hours in the presence of P.Ws.11 and 12, A1 and A2 voluntarily gave confessions and the admissible portion of the confession statements are marked as Exs.P.27 and P.28 and pursuant to the same M.Os.1 and 2 - Aruvals used by A1 and A2 and some incriminating materials were recovered. P.W.20 sent A1 and A2 to Court for remanding them to judicial custody and also sent the material objects for chemical analysis through the Court.

2.8. P.W.20 recorded the statements of P.W.16 as well as Dr.Sampath, who initially gave treatment to P.W.1 at Government Hospital, Alankottai and he also examined P.Ws.13 to 15, 17 and



19 and recorded their statements. P.W.20 re-examined P.W.1 and recorded his statement and after completing the investigation, he filed the final opinion on 13.07.2012 on the file of the Court of Judicial Magistrate, Aruppukkottai, charging A1 and A2 for the commission of offence under Sections 302 I.P.C. and A3 and A4 for the commission of offence under Section 302 r/w 34 I.P.C. and A2 and A4 for the commission of offence under Section 307 I.P.C. and against A1 and A3 for the commission of offence under Section 307 r/w 34 I.P.C. and the learned Judicial Magistrate took it on file in P.R.C.No.34/2012.

2.9. The Committal Court issued summons to the accused and on their appearance, they were furnished with copies of documents under Section 207 CrPC and having found that the case is exclusively triable by the Sessions Court, had committed the same to the Principal District Court. Thanjavur, who took it on file in S.C.No.165 of 2012. The accused were issued with summons and on their appearance, charges were framed against A1 and A2 for the commission of offence under Section 302 I.P.C. and against A3 and A4 for the commission of offence under Section 302 r/w 34 I.P.C. and against A2 to A4 for the commission of offence under Section 307 I.P.C. and against A1 for the commission of offence under Section 307 r/w 34 IPC.

2.10. The prosecution, in order to sustain its case, examined PWs.1 to 20, marked Exs.P1 to P31 and also marked M.Os.1 to 10. The accused were questioned under Section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances made out against them and they denied it as false. The accused examined D.Ws.1 to 3 and also marked Exs.D1 to D13.

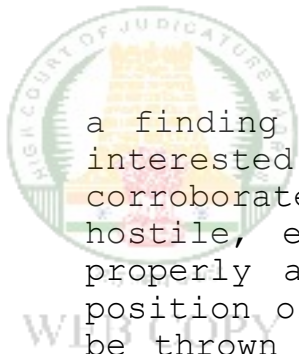
2.11. The Trial Court, on a consideration of oral and documentary evidence and other materials, had found the respondents 2 to 4/accused Nos.1, 3 and 4 not guilty of the offences and acquitted them as stated above, vide impugned judgment dated 23.08.2016 and since A2 died during the pendency of the Trial, the charge against him got abated and challenging the legality of the same, the son of the deceased filed the present Criminal Appeal.

3. Mr.G.Marimuthu, learned counsel appearing for the appellant/son of the deceased has drawn the attention of this Court to the impugned judgment of acquittal and made the following submissions:

(I) P.Ws.1 to 5 were cited as eyewitness and though P.Ws.4 and 5 did not support the prosecution and has been treated as hostile, P.Ws.1 to 3 fully supported the case of the prosecution and more particularly P.W.1, son of the deceased, is also an injured witnesses and therefore, his testimony carries much weight and his deposition has been amply corroborated through P.Ws.2 and 3.

(ii) Original of complaint - Ex.P.1 as well as F.I.R. - Ex.P.22 reached the jurisdictional Magistrate Court without any loss of time.

(iii) The trial Court committed a grave error in arriving at



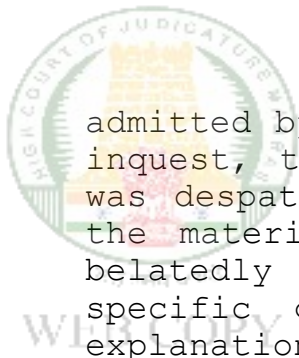
a finding that the testimonies of P.Ws.1 to 3 - eyewitnesses were interested testimonies and therefore, it should have been corroborated by P.Ws.4 and 5. Since P.Ws.4 and 5 have turned hostile, eschewing their evidence, the trial Court ought to have properly appreciated the evidence of P.Ws.1 to 3. It is settled position of law that it is because interested, the testimony cannot be thrown and corroboration should be exercised while appreciating the testimony.

(iv) The trial Court has considered the trivial discrepancies viz., place of occurrence, availability of light and the witnesses to the recovery turned hostile as a major one and awarded the benefit of doubt to the accused overlooking the settled legal position of law and the fact that the investigation officer has cogently spoken about the arrest and recovery and that apart the eyewitnesses are very categorical that the occurrence took place in front of the house of the deceased himself. Eyewitnesses and accused are known to each other and as such appreciation of the material witnesses done by the trial Court is *per se* perverse.

(v) The trial of the case was conducted nearly after four years from the date of occurrence and there bounds to be some discrepancies and since the said discrepancies are very minor in nature and the eyewitnesses corroborated with each other and supported by scientific evidences and other witnesses, the trial Court erred in acquitting the accused and therefore, prayed for setting aside the order of acquittal and impose upon them the maximum sentence.

4.Mr.S.Chandrasekar, learned Additional Public Prosecutor appearing for the first respondent/State would submit that the State did not prefer any appeal against the impugned judgment of acquittal passed by the trial Court and he would further add that the testimonies of P.Ws.1 to 3 should be given much importance, especially, the testimony of P.W.1. Though it is alleged that there were lapses in the investigation for the reason though P.W.1 was available, as per testimony of P.W.2 and P.W.3 when the police came to the spot, he was not examined and that apart eyewitnesses were not examined during the inquest and since these are minor and trivial discrepancies, the trial Court ought not to have acquitted the accused and prays for appropriate orders.

5.Mr.S.Bharathi, learned counsel appearing for the 2nd respondent/A1 and Mr.S.G.OL.Rishwanth, learned counsel appearing for the respondents 3 & 4/A3 and A4 in extenso drawn the attention of this Court to the testimonies of witnesses and would submit that it is the version of the prosecution that immediately after the occurrence took place P.W.1 proceeded to the police station and lodged a complaint and from the police station itself he was sent to Government Hospital, Aruppukkottai for treatment as he had sustained injuries, whereas his wife P.W.2 as well as P.W.3 spoken about the presence of P.W.1 when the police came to the spot and it was



admitted by P.W.20 that though eyewitnesses were present during the inquest, they were not examined and that apart the inquest report was despatched to the Court on the next day and the statements of the material witnesses recorded under Section 161(3) Cr.P.C. has belatedly reached the Court only on 18.05.2012 and despite a specific question to P.W.20, he failed to offer any tenable explanation.

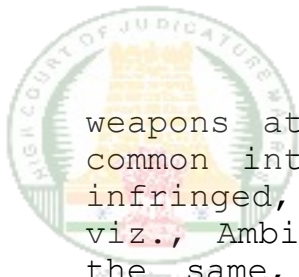
6.It is the further submission of the learned counsel appearing for the respondents 2 to 4/A1, A3 and A4 that the occurrence did not take place in front of the house of the deceased but in front of the house of one Irakimittal and the investigation officer has deposed that he did not note the house of Irakimittal in the Rough Sketch and in view of the same a doubt was created as to whether the occurrence took place in front of the house of the deceased and the said discrepancy creates a doubt as to whether P.W.1 had witnessed the occurrence at all. It is also their submission that admittedly P.Ws.1 to 3 are very closely related to the deceased and though the prosecution has cited two other witnesses viz., P.Ws.4 and 5 as eyewitnesses, they did not support the case of the prosecution and since the evidence of P.Ws.1 to 3 is the interested testimony, it has to seek certain corroboration, however, such corroboration was utterly lacking. It is further pointed out by the learned counsel appearing for the respondents 2 to 4 that the witnesses to the Mahazar and recovery also turned hostile and the trial Court on thorough consideration and appreciation of oral and documentary evidence has rightly reached the conclusion that the prosecution has failed to prove its case beyond any reasonable doubt and hence, pray for dismissal of the appeal.

7.This Court paid its anxious consideration to the rival submissions made and also perused the oral and documentary evidences and other materials placed on record including the impugned Judgment as well as the original records.

8.The question arises for consideration in this Criminal Appeal is whether the reasons assigned in the impugned judgment passed by the trial Court for acquitting the respondents 2 to 4/accused 1, 3 and 4 are sustainable?

Question No. [i] :

9.P.W.1 is the son of the deceased viz., Ambigapathi and immediately after the occurrence, he proceeded to Paralachi Police Station and lodged the complaint under Ex.P.1 and in the chief examination as P.W.1, he deposed in consonance with Ex.P.1. P.W.1 spoken about the sale of their property by the accused and therefore his father/deceased started castigating them and infuriated by the same all the accused came to spot and A1 and A2 armed with lethal



weapons attacked him and so also A3 and A4 and they shared the common intention and due to the cumulative effect of the attack infringed, he died on the spot. P.W.1 would state that his father viz., Ambigapathi castigated/abused the accused and aggrieved over the same, the accused attacked the deceased. P.W.1 denied the suggestion that as against him and his father there are very many criminal cases numbering 10 registered by Paralachi Police Station and they were also facing criminal prosecution for sale of illegal liquor and denied the suggestion that his father was doing real estate business and cheated very many persons and earned very many enemies. P.W.1 would admit during the course of cross-examination that he was taking rest in front of the house of one Perumal and at that only the occurrence took place. P.W.1 would concede that when the investigation officer P.W.10 came to the spot he was present in the spot and further he would admit that when he went to Paralachi Police Station to lodge the complaint he was issued with medical memo and on receipt of medical memo he did not go to the hospital. Therefore, the presence of P.W.1 at the scene of occurrence, when P.W.20 came to the spot has been substantiated.

10.P.W.2 is the wife of P.W.1 and in the cross-examination she would state that the police came to the spot at 12.00 midnight on 26.12.2011 and she was examined and her statement was also recorded and her husband came to the spot at 12.30 p.m. from the police station and at that time police were present and from there he proceeded to the hospital. P.W.2 denied the suggestion that the occurrence took place in front of Irakkimittal house but only in front of the house of her father-in-law and in latter portion would state that body of her father-in-law was found in front of the Irrakkimittal and P.W.4 accompanied her husband when he went to the police station to lodge the complaint.

11.P.W.3 is wife of the deceased, mother of P.W.1 and mother-in-law of P.W.2 and she was cross-examined only with regard to the motive. P.W.11 was examined with regard to arrest of A1 and A2 and recovery and he was treated as hostile witness.

12.P.W.13 is the Constable attached to the Paralachi Police Station and he has spoken about the handing over the body of the deceased along with the requisition letter for postmortem. In the cross-examination he would state that at about 10.00 a.m. on 26.12.2011 the information with regard to the murder of Ambigapathi was received by the police station and it was informed to the Sub-Inspector of Police and he went to the hospital at 11.30 p.m. along with the body and along with him the injured person also come and he was present in the hospital at 11.30 p.m. on 26.12.2011 till 12.00 p.m. on 26.12.2011.

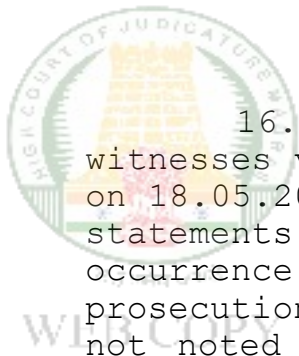
13.P.W.15 was the Assistant Professor and Civil Surgeon of Government Rajaji Hospital as well as Madurai Medical College Hospital and he would state when he was on duty on 26.12.2011, P.W.1 was referred to by Dr.Sampath of Aruppukottai Government Hospital,



where he was given first aid and he issued the wound certificate marked as Ex.P.16. It is the submission of the learned counsel appearing for respondents 2 to 4/A1, A3 and A4 that P.W.15 has spoken about the treatment given by Dr.Sampath at Aruppukottai Government Hospital and though he was examined during the investigation he was not cited as witness and no tenable or plausible or acceptable reason has been assigned by P.W.20 as to his non-examination and that apart the accident register pursuant to the treatment given by Dr.Sampath attached to Government Hospital, Aruppukkottai was also not produced. P.W.20 was very well aware of the fact that P.W.1 was initially given treatment at Government Hospital, Aruppukkottai by Dr.Sampath who was examined during investigation, however, he did not take any step to seize the accident register.

14.P.W.16 is the doctor, who conducted autopsy, has issued the postmortem certificate marked as Ex.P.17 and opined that the deceased died on account of injury to the vital organs and in the cross-examination it was suggested that the injury No.2 might have been caused on account of falling upon flour grinding stone and he has also answered positively to the said suggestion. The postmortem report as well as other scientific evidences would disclose that the deceased died on account of homicidal violence.

15. P.W.20 - the investigation officer in the cross-examination would state that he reached the scene of occurrence at about 05.00 hours on 27.12.2011 and he was informed of the said occurrence by the Constable who registered the F.I.R. viz., P.W.19, through telephonic information. A specific question was put to P.W.20 that when he came to the scene of occurrence whether he noted the presence of P.W.1, he denied it. However, it is to be pointed out at this juncture that it is the categorical testimony of P.W.1 that he was present in the scene of occurrence when the police came there and that is also corroborated by the testimony of P.Ws.2 and 3. P.W.20 would further state that when eyewitnesses were present during the course of examination, they should be examined without any delay and conceded that when he came to the scene of occurrence the eyewitnesses were present and therefore, the statements recorded were despatched to the Court and inquest report marked as Ex.P.26 were despatched to the Court on the next day i.e., on 27.12.2011. P.W.20 would further concede that at the time of cross-examination, he did not examine the eyewitnesses at the time of inquest and as per the contents of the inquest report except the Panchayatars he did not examine any eyewitness and would further state that in column No.3 of the inquest report he noted that P.W.1 had seen the attack inflicted on the deceased. It is further conceded by P.W.20 that when eyewitnesses are examined during the inquest their separate statements has to be recorded and once again conceded that he did not examine P.Ws.1 to 3 - eyewitnesses during the inquest.



16.P.W.20 would submit that the statements of material witnesses viz., eyewitnesses P.Ws.1 to 3 have reached the Court only on 18.05.2012. A specific suggestion was also put to P.W.20 that the statements of eyewitnesses were falsely prepared, altered and the occurrence did not take place in the date of time projected by the prosecution. P.W.20 would concede that the house of Irakkimittal was not noted in the rough sketch and the house Irakkimittal located opposite to the house of Perumal and P.W.1 during the course of investigation did not state that all the accused surrounded and attacked his father.

17.The learned counsel appearing for the appellant/P.W.1 has also placed reliance upon the judgments reported in **A.I.R. 2013 SC 3726 [Subodh Nath v. State of Tripura], (2016) 2 MLJ 409 [Muthukumar v. State], AIR 2012 SC 3539 [Shyamal Ghosh v. State of West Bengal] and 2010 Crl.L.J. 3889 [State of U.P. v. Krishna Master]** in support of the proposition that trivial discrepancies due to belated commencement of the trial would not affect the core of the prosecution and that every omission cannot take the place of a contradiction in law so as to doubt the case of the prosecution. There cannot be any difficulty in accepting the said proposition but, it has to be seen as to whether in the case on hand, the prosecution has proved its case beyond any reasonable doubt.

18.As already pointed out, P.W.1 immediately after the occurrence went along with P.W.4 to the Paralachi Police Station and lodged the complaint under Ex.P.1. It is the categorical submission of P.W.19, who registered the F.I.R. that he was sent to Aruppukkottai Government Hospital along with medical memo and P.W.1 in the course of cross-examination stated that he did not go to the hospital with the medical memo but in fact came to the scene of occurrence and saw the presence of the police. P.W.2, his wife also corroborated the said version. P.W.13 the postmortem Constable would concede that when he took the body for postmortem, he was accompanied by the injured person, which in all probability is P.W.1. P.W.1 was taken to Government Hospital, Aruppukkottai and he was initially treated by Dr.Sampath. P.W.20 would state that he examined Dr.Sampath during investigation but he was not cited as a witness and the accident register copy was also not marked as exhibit. P.W.20 was extensively cross-examined as to the preparation of inquest report and he would concede that when the eyewitnesses are present their submissions should be recorded individually during the course of inquest, but he did not do so. Though P.W.20 would state that P.W.1 did not present when he came to the spot, in the light of the above testimonies this Court is of the considered view that P.W.1 was present when the investigation officer - P.W.20 came to the spot. P.W.20 did not take steps to examine the eyewitnesses on the same day but examined them at a later point of time. It is also to be noted at this juncture that though the statements of eyewitnesses were recorded after the occurrence on 27.12.2011, it



reached the jurisdictional Magistrate Court only on 18.05.2012. A specific suggestion was put to P.W.20 - Investigation Officer that the statements of the witnesses were prepared belatedly and that the occurrence did not take place at the time and date as projected by the prosecution and it was foisted against the accused.

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19. It is relevant here to refer to the judgment of the Hon'ble Supreme Court of India reported in **1974 L.W. (Cr1.) 190 [Karunakaran Jabamani Nadar In re]**.

"15. ... it is imperative that the following documents should be despatched immediately, without any delay by the investigating officers to the Sub-Magistrate. The Station House Officer should record the time of the actual despatch of the various documents in the various registers, particularly, the statement recorded under S. 154 of the Code of Criminal Procedure. On receipt of the said documents, the Magistrate should initial the same, noting therein the time and date of the receipt of those documents. This would provide the only judicial safeguard against subsequent fabrication of such documents in grave crimes. Therefore, as the Manual of Instructions for the Guidance of Magistrates in the Madras State does not contain any instructions to the Magistrates in this regard, we suggest that the same may be brought up to date by incorporating in it the circulars which had been issued from time to time for the guidance of the Magistrates. The following are documents of special importance which, in our opinion, should be despatched by the investigating officers without any delay to the Magistrates, and they should bear the initials of the Magistrate with reference to both the time and date of their receipt.

1. The original report or complaint under S. 154 of the Code of Criminal Procedure.

2. The printed form of the first information report prepared on the basis of the said report or complaint.

3. Inquest reports and statements of witnesses recorded during the inquest.

4. Memo, sent by the Station House Officers to doctors for treating the injured victims who die in the hospital subsequently and the history of the case-treatment.

5. Memo, sent by the doctor to the police when a person with injuries is brought to the hospital, or the death memo, sent by the doctor to the police on the death of the person admitted into the hospital with injuries.

6. Observation mahazars and mahazars for the recovery of material objects, search lists and the statements given by the accused admissible under Section 27 of the Evidence Act, etc. prepared in the course of the investigation.

7. The statements of witnesses recorded under Section 161 (3) of the Code of Criminal Procedure.

8. Form No. 91 accompanied by material objects."



20.P.W.2 though initially in the course of cross-examination would state that the occurrence took place in front of her father-in-law's house, however, latter the body was found in front of the house of Irakkimittal. P.W.20 would state that he did not note the house of Irakkimittal in the sketch. P.W.20 would further state that he did not examine the Electrical Inspector to found whether there was electricity supply and the street light was burning or not.

21.The trial Court recorded the finding that the testimony of P.Ws.1 to 3 - eyewitnesses have not been corroborated by P.Ws.4 and 5 and they turned hostile. However, it is to be noted at this juncture that the statements of material witnesses, though the investigation is under obligation to despatch the statements of the material witnesses P.Ws.1 to 5 immediately to the Court, but the fact remains that they did not do so and it was despatched only on 18.05.2012, for which no tenable or acceptable or plausible explanation has been offered and that apart despite series of specific questions were put to P.W.20 as to the non-examination of eye-witnesses during the inquest, though P.W.20 would state that he is very well aware of the procedure, he did not offer any explanation as to the non-examination of eyewitnesses during the inquest.

22.It is well settled position of law that whatever be the gravity of the offence, if the prosecution has failed to prove the case beyond any reasonable doubt, the benefit of doubt shall enure in favour of the accused. It is a case of appeal against acquittal and the Hon'ble Supreme Court enunciated the following while dealing with appeal against acquittal:

(i) In **(1933-34) 61 IA 398 : (1934) 36 Bom LR 1185 [Sheo Swarup v. King-Emperor]**, in paragraph 9 it is held as follows:

"9. the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses."

(ii) In **AIR 1952 SC 52 : 1952 Cri LJ 331 [Surajpal Singh v. State]** it is held as follows:

"7.It is well-established that in an appeal under section 417 of the Criminal Procedure Code, the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the



findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons."

(iii) In (2014) 5 SCC 730 : (2014) 2 SCC (Cri) 690 [Muralidhar v. State of Karnataka], the Hon'ble Supreme Court of India has culled out the principles with regard to the power of this Court to interfere with the order of acquittal and it is relevant to extract paragraph No.12:

"12. . . . (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."

23. Though this Court on appreciation of evidence can reach a different conclusion, unless it records the finding that appreciation of evidence on the part of the trial Court is perverse, it cannot interfere with the order of acquittal passed by the trial Court. It is also to be noted that the trial Court also had the benefit of weighing the demeanour of witnesses during their examination and this Court has the added benefit while appreciating the reasons assigned by the trial Court. In the considered opinion of this Court, in the light of the above facts and the reasons assigned by the impugned judgment of acquittal passed by the trial Court, does not warrant interference.



24. In the result, this Criminal Appeal is dismissed confirming the judgment dated 23.08.2016, made in S.C.No.165 of 2012 by the Principal District and Sessions Judge, Viruthunagar District at Srivilliputtur.

WEB COPY

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

sj

To

1. The Principal District and Sessions Judge,
Virudhunagar District,
@ Srivilliputtur.

2. The Judicial Magistrate,
Aruppukottai,
Virudhunagar District.

3. The Chief Judicial Magistrate,
Aruppukottai, Virudhunagar District.

4. The Superintendent of Police,
Virudhunagar District.

5. The Inspector of Police,
Paralachi Police Station,
in Thiruchuli Circle Police Station,
Virudhunagar District.

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

7. The Section Officer,
Criminal Records Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.G.M.LAW OFFICE, Advocate (SR-79591[F] dated 05/08/2019

+1 CC to M/s.S.BHARATHI, Advocate (SR-80105[F] dated 06/08/2019)

CrI. A. (MD) No.276 of 2017

02.08.2019

_KK/SAR/27.08.2019/13P-11C/