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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl. A. (MD)No.291 of 2017

Kuppammal

... Appellant/P.W.4

Vs.

1.State rep. by

The Inspector of Police,
Madhukkur Police Station,
Thanjavur District.

(In Crime No.189 of 2005)

... 1st Respondent/
Complainant

2.Apti @ Thiyagamani

3.Kundumani @ Balasubramani

4.Saminathan

5.Veerakumar

6.Periasamy

... Respondents 2 to 6/A1 to A5

Prayer: Criminal Appeal filed under Section 372 of the Criminal Procedure Code, against the judgment of acquittal in S.C.No.111 of 2015 on the file of the Principal District Court, Pudukkottai dated 05.04.2017.

For Petitioner : Mr.M.Ramu

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

For Respondents 2 to 4 & 6 : Mr.A.Thiruvadikumar

For 5th Respondent : No appearance

J U D G M E N T

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

The wife of the deceased, viz., Kamatchi is the appellant and challenging the judgment of acquittal dated 05.04.2017 made in S.C.No.111 of 2015 on the file of the Court of Principal District and Sessions Judge, Pudukkottai 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:



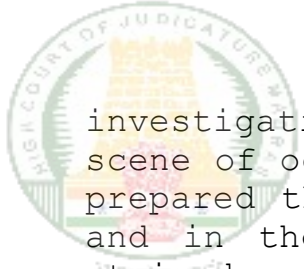
2.1. The deceased is the elder brother of P.W.1 viz., Veeraian.

2.2. The wife of the absconding accused viz., Govindamani was suffering due to some illness and for the purpose of curing it, he approached P.W.1, who promised to cure the same by giving talies on receiving a sum of Rs.300/-. The absconding accused Govindamani having found that it did not yield any result and that his wife continued to live with the same illness, demanded the amount of Rs.300/- paid to P.W.1. However, P.W.1 sought some time to part with the same. Aggrieved by the same, the absconding accused forcibly took the bike of P.W.1 bearing registration No.TN-49-3233 and handed over the same to one Ayyappan with an instruction that until P.W.1 gives the said sum of Rs.300/-, the vehicle should not be returned. In this regard P.W.1 also lodged a complaint on the file of Madhukkur Police Station and therefore, they developed an enmity.

2.3. On 27.07.2005 at about 2.30 p.m., P.W.1 along with his elder brother Kamatchi and P.W.2 were proceeding in the two wheeler - M.O.6 to Periakottai in Perugavazthan main road and when they were nearing Avvaiyandi Road Paraiyan burial ground Bridge, the first accused viz., Apti @ Thiyagamani came in a Ambassador Car bearing registration No.TN 49 0049 from Avvaiyandi Road and hit the motor cycle and thereafter halted it. The first accused instigated the rest of the accused to get down from the car with lethal weapons and wooden logs and they formed into an unlawful assembly and on seeing them P.Ws.1 and 2 and the deceased Kamatchi started running and Kamatchi could not keep pace with P.Ws.1 and 2. The accused in the present sessions case along with the absconding accused chased them and got the deceased in the field of one Senthil and attacked him with lethal weapons and wooden logs and he sustained grievous injuries. The occurrence was also witnessed by the persons, who were in the neighbouring lands and also the other eyewitnesses viz., P.Ws.3, 5 to 7 and 12 and from the field of Senthil, the injured was taken to the main road and the service of a TATA Ace was used to take the injured initially to the Government Hospital, Pattukottai, where he was seen by P.W.9, and after examination P.W.9 issued Ex.P.4 Accident Register and thereafter, on advise he was taken to Thanjavur Government Medical College Hospital and he survives for 3 days and without responding to treatment he died on 30.07.2005.

2.4. When the injured was taken to the Government Hospital, Pattukottai, P.W.1 proceeded to Madhukkur Police Station and lodged a complaint and based on which, P.W.11, Sub-Inspector of Police registered a case in Crime No.189 of 2005 for the commission of offences under Sections 147, 148, 341, 324 and 307 I.P.C. The printed F.I.R. was marked as Ex.P6.

2.5. Thereafter, P.W.11 despatched the original F.I.R. and the original documents to the jurisdictional Magistrate and for the investigation forwarded the papers to P.W.14. P.W.14, who was the Inspector of Police attached to Madhukkur Police Station and on receipt of the F.I.R. commenced



investigation on 27.07.2005 at 16.30 hours and proceeded to the scene of occurrence and in the presence of Chandran and Maheswaran prepared the Observation Mahazar Ex.P.8 and Rough Sketch - Ex.P.9 and in the presence of the same witnesses had recovered blood stained earth M.O.7 and sample earth M.O.8 under the cover of mahazar Ex.P.10. The motor cycle recovered was marked as M.O.6. Thereafter, P.W.14 examined P.Ws.1 to 3, 6, 7, Chandran and Maheswaran and recorded their statements under Section 161(3) Cr.P.C. P.W.14 went in search of the accused and on 29.07.2005 at 8.00 a.m. effected arrest of Govindamani and Kriti @ Balakrishnan and accused Govindamani voluntarily came forward to give a confession statement and as per the admissible portion of the confession statement he recovered M.Os.1 to 5 under the cover of Mahazar Ex.P.12. P.W.14 on receipt of the information from the Thanjavur Medical College Hospital that at about 12.10 a.m. on 30.07.2005 the injured Kamatchi died without responding to the treatment, altered the F.I.R. for the commission of offences under Sections 147, 148, 341, 324 and 302 I.P.C. and the alteration report was marked as Ex.P.13. The deceased's body was kept in the mortuary and at about 9.00 a.m. on 30.07.2005, he conducted inquest on the body of the deceased in the presence of witnesses and panchayatdars viz., Rajkumar, Shanmugam, Jeyabalan, Poyyamozhi and P.W.2 and the Inquest Report was marked as Ex.P.14. P.W.14, thereafter made a request for conducting postmortem on the body of the deceased and sent a requisition letter through P.W.10 Head Constable to Government Medical College Hospital, Thanjavur.

2.6.Dr.Vijalakshmi was the Police Surgeon and Professor of Forensic Medicine, Medical College Hospital, Thanjavur and based on the request received from P.W.14/Investigation Officer at 11.45 p.m. on 30.07.2005, seen the body of the deceased at 12.00 noon on 30.07.2005 and noted the following features before commencing the postmortem:

"(1) An old wound scar over the middle of front of left Thigh.

(2) A black mole over the middle of medial aspect of right upper arm.

(3) Tatoo MARKS: 1.Figure of Lion over both infra clavicular areas.

2.Figures of OM MURUGA over the front of right forearm.

The body was first seen by the undersigned at 12.00 Noon on 30.07.05. Its condition then was Rigor mortis present all over the body. Postmortem commenced at 12.00 Noon on 30.07.05. Appearances found at the postmortem: Moderately nourished body of a male."

The following external injuries as well as other features were noted:

1.Plaster of paris cast dressing noted over the whole of left upper limb and right lower limb.

2.A curved oblique sutured cut lacerated wound with intact silk sutures noted over the left side parietal

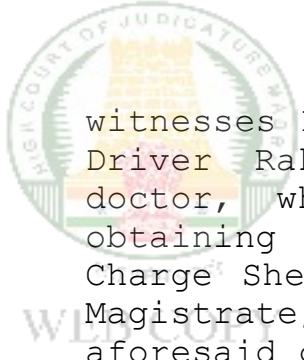


eminence areas measuring 8cmx2cmxbone deep with surrounding abraded contusion and the cut lacerated Brain matter was found coming through this wound.

3. A vertical sutured cut wound with intact silk sutures noted over the middle of right side occipital region measuring 6cmx1cmxbone deep.
4. Multiple oblique cut wounds noted over the palmar aspects of bases of right thumb, Index finger and middle fingers each measuring 3cmx2cmxbone deep with cut fractures of the underlying phalanges which were found exposed outside.
5. An oblique sutured cut wound with intact silk sutures noted over the upper third of front and medial aspect of Right leg measuring 10cmx2cmxbone deep with wide cut fracture of the underlying Tibia Bone.
6. A Transverse cut wound found sutured and with intact silk sutures noted over the middle of front of right leg measuring 10cmx2cmxbone deep with cut fracture of the underlying Tibia bone.
7. An wide gaping Transversely placed sutured cut wound with intact silk sutures noted over the back of left wrist measuring 14cmx3cmxwrist joint cavity deep with Traumatic amputation of left Hand from the wrist level exposing the cut fractured portions of all the carpal bones and lower ends of Radius and Ulna Bones.
8. An wide gaping cut wound over the whole of base of left Thumb on the palmar aspect measuring 7cmx3cmxbone deep found sutured with silk sutures with Traumatic amputation of left thumb.
9. An oblique sutured cut wound with intact silk sutures over the upper part of front and medial aspect of left upper arm measuring 7cmx1cmxbone deep with cut fracture of the underlying humerus bone.
10. 10 A cut wound over the left scapular area measuring 2cmx2cmxbone deep.
11. Diffuse contusion over the left scapular area over an area of 4x4cm."

The doctor after concluding the postmortem opined that the deceased would appear to have died due to multiple cut wounds involving the vital organ namely the brain. The postmortem certificate is marked as Ex.P.7.

2.7.P.W.14 continued with the investigation and on 31.07.2005 at about 6.00 a.m. near Keezhakurichi Bus Stop, arrested A2 to A5 and sent them for judicial custody. On 02.08.2005 at about 16.00 hours, he seized the car in the presence of one Amanullah and Ramachandran and sent it to the Court under Form 95. The vehicle was handed over to A1 subject to certain conditions. It also appears that petitions were filed for transfer of charges to Sessions Court and trial and therefore, the trial was transferred from Sessions Court, Thanjavur to Sessions Court, Pudukkottai. As directed by this Court, P.W.14 re-examined the



witnesses P.Ws.1 and 2 and on 09.01.2006, he examined Subramanian, Driver Rakesh, P.W.9-Dr.Chellappan, Dr.Vijayalakshmi, the doctor, who conducted autopsy and P.Ws.10 and 11 and after obtaining opinion from the Public Prosecutor he had filed the Charge Sheet on 31.03.2006 on the file of the Court of Judicial Magistrate, Pattukottai charging the appellant/accused for the aforesaid offences, who took it on file in P.R.C.No.8/2006.

2.8. The Committal Court issued summons to the accused and three of them had absconded and on the appearance of the accused herein, 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.107 of 2017, which was later transferred to the Court of Principal District Judge, Pudukkottai, who took it on file in S.C.No.111 of 2015. The respondents 2 to 6/accused Nos.1 to 5 were issued with summons and on their appearance, charges under Sections 148, 341, 302 r/w 149 IPC have been framed.

2.9. The prosecution, in order to sustain its case, examined PWs.1 to 14, marked Exs.P1 to P15 and also marked M.Os.1 to 9. The respondents 2 to 6/accused Nos.1 to 5 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 respondents 2 to 6/accused Nos.1 to 5 did not examine any witness and not marked any document.

2.10. The Trial Court, on a consideration of oral and documentary evidence and other materials, had found the respondents 2 to 6/accused Nos.1 to 5 were not guilty of the offences and acquitted them as stated above, vide impugned judgment dated 05.04.2017 and challenging the legality of the same, the wife of the deceased filed the present Criminal Appeal.

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

(i) The trial Court held that the motive aspect has not been proved by the prosecution overlooking the well settled position of law that in case the prosecution case rests upon the testimonies of eyewitness the motive pale into insignificance. P.W.1 has categorically spoken about the dispute between him and the absconding accused Govindamani as to the remedial measures suggested by tying talis and demand for return of money and as such the motive has been proved by the prosecution. It is also the case of the prosecution that on 27.07.2005, P.Ws.1 and 2 and the deceased were proceeding in a two wheeler and the accused came in an Ambassador Car and halted it and all the accused chased P.Ws.1 and 2 and the deceased and since the deceased was unable to run and could not cope up with the pace of P.Ws.1 and 2, he stopped in the field of one Senthil and he was done to death by the accused simply because he is the brother of P.W.1 and

therefore it cannot be stated that the motive aspect has not been proved by the prosecution.

(ii) The trial Court has disbelieved the eyewitnesses P.Ws.3, 5 to 7 and 12 on the ground that Ex.P.1 did not speak about their presence there. The said finding is un-sustainable for the reason that the F.I.R., which is registered on the basis of the complaint Ex.P.1, is not an encyclopedia of all dates and events and it is only a document, which enables the police to commence the investigation and the statement of the eyewitnesses recorded during the investigation would reveal the role played by all the accused and the testimonies of other witnesses also corroborates the evidence of P.Ws.1 and 2.

(iii) The trial Court committed a grave error in giving a finding that the place of occurrence has been shifted or rather not identified overlooking the evidence of P.Ws.1 and 2 that the deceased stopped on the field of one Senthil and thereafter he was surrounded and done to death by the accused and the Observation Mahazar - Ex.P.8 would also disclose that the occurrence took place in the field of one Senthil and Ex.P.9 is also to the said effect and M.Os.7 and 8 were also recovered from the said place and therefore, it cannot be said that the place of occurrence has not been identified.

(iv) The trial Court has given much importance to testimony of P.W.9 and Ex.P.14 overlooking the fact that the contents of the accident report can be relied upon only for the nature of the injuries sustained by the injured and it is not the substantive piece of evidence; however, the trial Court has given undue importance to the entries made in the accident register.

(v) The trial Court was wrong in coming to the conclusion that the confession as well as recovery has not been proved on the ground that the witness to the arrest and recovery viz., P.W.8 had turned hostile, overlooking the fact that the Investigating Officer - P.W.14 spoken about the said fact and it would suffice to conclude that the arrest and recovery has been proved by the prosecution.

(vi) The trial Court has also given undue importance as to the non-production of the records relating to the treatment given to the injured between 27.07.2005 and 30.07.2005 at Government Medical College Hospital, Thanjavur, overlooking the evidence of Dr.K.Tamilmani, who had spoken about the autopsy conducted by Dr.Vijayalakshmi coupled with Ex.P.7 - postmortem report, which proved the fact that the deceased died on account of head injury sustained by him and thus the prosecution has proved that the deceased died on account of homicidal violence and it was the accused who caused his death.

(vii) The trial Court had concluded that the blood stained clothes from P.Ws.1 and 2 have not been recovered by ignoring the evidence of P.W.14, who had stated that the said witnesses did not say that their clothes were tainted with blood while taking the injured to the Hospital and as such there was no necessity to



seize the alleged blood stained clothes worn by P.Ws.1 and 2 and even in the absence of seizure of blood stained clothes said to have been worn by P.Ws.1 and 2, the prosecution through the exhibits and the material objects proved its case beyond reasonable doubt.

(viii) It is also to be pointed out that on account of the abscondence of three accused, the trial Court could not proceed with the case, despite the occurrence took place on 27.07.2005, the examination of witnesses commenced only on 28.09.2016 and therefore, due allowance has to be given to the memory of the eyewitnesses.

(ix) In sum and substance, it is the submission of the learned counsel appearing for the appellant/wife of the deceased that the trial Court, by pointing out the probabilities with triviality had granted the benefit of doubt to the accused, whereas, the prosecution has proved its case beyond all reasonable doubts and therefore, prays for conviction of respondents 2 to 6 and imposition of sentence of imprisonment and fine as well as compensation.

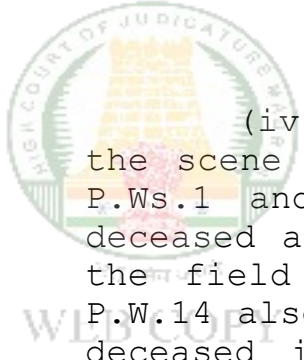
4.Mr.S.Chandrasekar, learned Additional Public Prosecutor appearing for the first respondent/State would submit that the State did not prefer appeal against the impugned judgment of acquittal and insofar as the absconding accused are concerned, the accused with fatal overt act viz., Govindamani continued to be absconding and insofar as other absconding accused viz. Kriti @ Balakrishnan and Sankar are concerned, the matter is still pending in committal proceedings in P.R.C.No.62 of 2014 on the file of Judicial Magistrate, Pattukkottai and undertakes to instruct the investigating officer to take the case seriously and to apprehend the absconding accused and to split up the case in respect of other two accused.

5.Mr.A.Thiruvadikumar, learned counsel appearing for the respondents 2 to 4 and 6/A1 to A3 and A5 made the following submissions:

(i) In Ex.P.1 given by P.W.1, the presence of other eyewitnesses viz., P.Ws.3, 5 to 7 and 12 have not been stated and therefore, they cannot be stated as eyewitnesses to the occurrence.

(ii) P.Ws.1 and 2 said to have purchased grocery and they along with deceased came in a two wheeler on the fateful day, however, the said grocery said to have been purchased has not been seized.

(iii) The motive aspect, as rightly pointed out by the trial Court, have not been proved by the prosecution for the reason that even as per their case, the target would be only P.W.1 and not the deceased, who is nothing to do with alleged ~~deceased~~ the promise between P.W.1 and the absconding accused Govindamani and he has got no axe to grind against the deceased.



(iv) There is a vital and grave discrepancy with regard to the scene of crime and that according to the eye-witnesses viz., P.Ws.1 and 2, they were chased for some time along with the deceased and whether the occurrence took place in the road or in the field of Senthil has not been established and that apart P.W.14 also did not examine the owner of the field, in which, the deceased is said to have been found dead and as such in the absence of proof regarding the scene of crime, it cannot be said that the prosecution has proved its case beyond reasonable doubt.

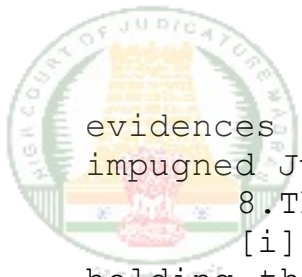
(v) The material witnesses viz., P.Ws.1 and 2 had made very many improvements from that of the statements recorded under Section 161(3) Cr.P.C. during the investigation and contradictions were also elicited through the investigating officer - P.W.14 and if the contradictions are taken into account the presence of second respondent/A1 in the scene of occurrence is highly doubtful and with regard to the overt acts attributed to the rest of the accused there are very many material improvements and since there are material improvements, it is not safe to rely upon the evidence of the said witnesses and the trial Court has also concluded so.

(vi) Insofar as accident register, marked as EX.P.4 coupled with the evidence of P.W.9 is concerned, according to the testimony of P.W.2 when P.W.1 went to police station to lodge the complaint, he alone took the injured and gone to Pattukottai Government Hospital, and if he has really accompanied the injured his initial statement would have been recorded in the relevant column in EX.P.4 and therefore, the presence of P.W.2 in the scene of occurrence was also highly doubtful.

(vii) Even as per the evidence of P.W.2, the deceased was having very many disputes with very many persons and they might have grouse against him and in the absence of tenable and quality evidence, the trial Court has rightly reached the conclusion to award the benefit of doubt to the accused and acquitted them.

6. On the legal aspects with regard to the interference with the order of acquittal made, the learned counsel appearing for the respondents 2 to 4 and 6/accused Nos.1 to 3 and 5 would submit that the trial Court on thorough application of mind and consideration of oral and documentary evidence had reached the conclusion that the prosecution has failed to prove the case beyond reasonable doubt and this Court cannot take a different view and he further pointed out that nearly 14 years have lapsed from the date of the said occurrence and at this distant point of time it may not be correct to disturb the order of acquittal and he also pointed out that one main accused still remains absconding and in respect of other two accused are concerned the case is in committal stage and hence prays for confirmation of the judgment of acquittal by the trial Court.

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 following questions arise for consideration:-

[i] Whether the impugned judgment passed by the trial Court holding that the respondents 2 to 6/accused 1 to 5 are not guilty of the charges is sustainable? and

[ii] Whether the impugned judgment of acquittal is liable to be reversed?

Question No. [i] :

9. This Court before deciding the questions posed by this Court for consideration in this appeal would like to analyse the legal position with regard to the interference in the order of 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;

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(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the



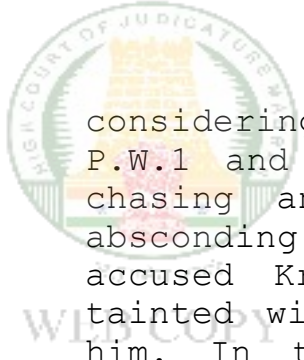
appeal against acquittal;

(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."

10. This Court is vested with the power of re-appreciating the evidence available on record, however, while doing so, such interference is not permissible on the ground that different view is possible and if the order of acquittal passed by the trial Court is justified in the light of the reasons assigned we should not interfere with it normally. This Court keeping in mind the well settled legal position, which stood test of time, we proceed to analyse the materials, which weighed the minds of the trial Court to pass the order of acquittal against respondents 2 to 6/accused 1 to 5.

11. P.W.1 is the own brother of the deceased and in Ex.P.1 - complaint given by him to Madhukkur Police Station, he has stated the overt act on the part of Govindamani (Absconding Accused), A3 - Saminathan and Kriti @ Balakirshnan (Absconding Accused) and he would further state that known persons without knowing their names also attacked him with wooden logs. It is also to be noted at this point, he did not speak about the presence of rest of the eyewitnesses apart from P.W.2. The defacto complainant, who has given his evidence as P.W.1 in the cross-examination, made a submission with regard to the horoscope and other allied matters, the dispute is between him and the absconding accused Govindamani but not between his brother and the accused. He had also spoken about the stains of the blood in his clothes while lifting the deceased from the purpose of admitting him in the hospital. In the cross-examination on behalf of A2 to A4, certain contradictions were also elicited and it will be dealt with by this Court while

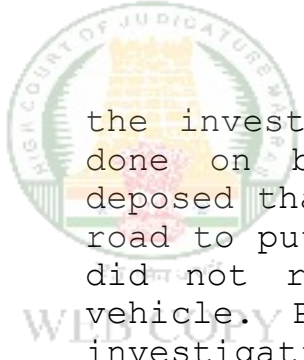


considering the evidence of P.W.14. P.W.2 said to have accompanied P.W.1 and the deceased and he also made submissions about the chasing and running and the overt act on the part of the absconding accused viz., Govindamani, A3 - Saminathan, absconding accused Kriti @ Balakrishnan and also that his clothes were tainted with bloods of the then injured Kamatchi while he took him. In the cross-examination done on behalf of the accused certain contradictions were elicited.

12.As far as the motive aspect is concerned, P.W.1 has clearly stated that the dispute is between him and the absconding accused Govindamani and the learned counsel appearing for respondents 2 to 4 and 6/accused Nos.1 to 3 and 5 sought to sustain the finding of the trial Court with regard to the motive as there was no enmity existing on the part of the respondents 2 to 6/accused 1 to 5 to do away with the life of the brother of P.W.1 for the reason that as against him they have no axe to grind or motive.

13.It is to be noted at this juncture, it is P.W.1, in Ex.P.1 - complaint and in his testimony as P.W.1 has stated that on 27.07.2005, when he along with P.W.2 and his deceased brother were proceeding in a two wheeler, the accused came in an Ambassador Car halted the vehicle and thereafter got down from the vehicle and at the instance of absconding accused Govindamani chased them and all the three of them started running and the deceased Kamatchi could not keep pace with them and he was done to death in the field of Senthil and for this there is a direct charge for the commission of offence under Section 302 I.P.C. The prosecution projected the case on the testimonies of eyewitnesses. In the case of eyewitness, the motive aspect pale into significance. If the submission of the learned counsel appearing for the respondents 2 to 4 and 6/accused Nos.1 to 3 and 5 is accepted, it would be due to anomaly for the reason that in the absence of any motive if a person is subjected to the homicidal violence, the concerned persons cannot be connected with the commission of offence. That is not the law. The fact is that the deceased Kamatchi died on account of homicidal violence. Therefore, this Court is of the considered view that the prosecution had proved the motive for the commission of offence, however, moot question is whether he was done to death by the respondents 2 to 6.

14.The primordial submission of the learned counsel appearing for the respondents 2 to 4 and 6/accused Nos.1 to 3 and 5 is that in the light of the material improvements made by P.Ws.1 and 2, coupled with the fact that even for sake of arguments their testimonies can be accepted, till the prosecution had failed to prove the evidence of the rest of the eyewitnesses and as such the trial Court was right in rendering not guilty finding. In this connection, this Court was taken through the cross-examination of

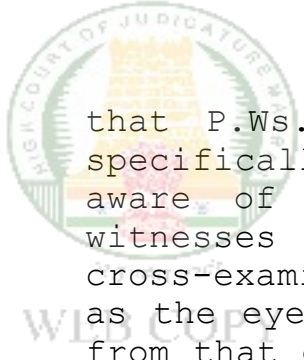


the investigating officer viz., P.W.14. In the cross-examination done on behalf of the second respondent/A2 the said witness deposed that the body of the deceased was taken from the field via road to put in a TATA Ace vehicle and taken to the hospital and he did not recover blood stains from the spot as well from the vehicle. P.W.14 would also state that P.W.1 in the course of investigation did not speak about the second respondent/A1 coming to the spot and not at all spoken about his presence in the scene of crime. Similarly in the statement recorded on 27.07.2005 also, he did not speak about A1 in the scene of occurrence, so also P.W.3. It is to be noted at this juncture, it is a material improvement made by P.Ws.1 and 3 from the statements recorded during the course of investigation under Section 161(3) Cr.P.C. and the contradictions elicited from P.Ws.14 in the considered opinion of this Court was material contradiction as to the presence of A1 in the scene of occurrence. Therefore, the prosecution was unable to prove the presence of A1 in the scene of occurrence.

15. In the cross-examination done on behalf of A2 to A4, P.W.14 would disclose that A3 viz., Saminathan in the course of his confession has stated that he cut the deceased Kamatchi on his head. Since the admitted portion of the confession is not marked, this Court is prepared to ignore the said statement made by the investigation officer during the cross-examination.

16. P.W.14 in the cross-examination further stated that P.W.1 while recording the statement under Section 161(3) Cr.P.C., did not say that A2 cut the deceased on his shoulder. It is also to be pointed out on this juncture that a specific charge against A2 was also framed for the commission of offence under Section 302 I.P.C. and the overt act attributed against him is that he cut the injured on the shoulder. Similarly in respect of A3 viz. Saminathan the charge was that he cut the deceased on the left side of the shoulder and with regard to the said statement contradiction was elicited through the testimony of P.W.14 and he has deposed that he has not stated as above. As regards recovery of blood stained clothes from P.Ws.1 and 2 is concerned, according to P.W.14, P.Ws.1 and 2 did not say so during the examination at the time of investigation. P.W.14 would further admit that with regard to the treatment given to the injured in Thanjavur Hospital between 27.07.2005 and 30.07.2005, he did not seize any records from the Government Medical College Hospital at Thanjavur and though P.W.14 would state that the commission of offence was witnessed by the persons who were grazing their cattle, he did not take any steps to record their statements.

17. In the cross-examination done on behalf of A4, P.W.14, the investigating officer would state that the witnesses did not state that after halting the motor cycle the accused did not suddenly got down from the car and also made a crucial admission



that P.Ws.1 and 2 during the course of investigation did not specifically state that except them the rest of the witnesses were aware of the incident. Contradictions made by the concerned witnesses were also put to P.W.14 investigation officer and the cross-examination would reveal that the material witnesses as well as the eyewitnesses viz., P.Ws.1 and 2 made material improvements from that of the submissions recorded during the examination under Section 161(3) Cr.P.C..

18. At this juncture, the learned counsel appearing for the petitioner would submit that the trial has commenced nearly after 11 years from the date of occurrence and hence there may be some memory loss and he is right to say so. However, as pointed out, the improvements are major and material in nature from that of the statements recorded during the investigation. The testimonies of P.Ws.1 and 2 would disclose that except them all the eyewitnesses projected by the prosecution would not have seen the occurrence and it is also fortified by the cross examination done on behalf of A4 with the investigation officer as pointed out supra.

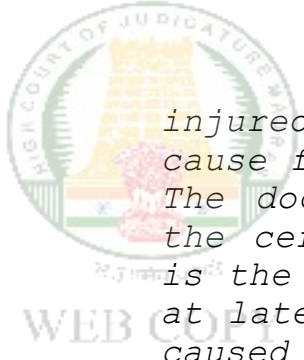
19. The learned counsel appearing for the private respondents made a forceful and vehement submission as to the entry made in the accident register and has placed reliance on very many judgments. However, it is relevant to consider the judgement of this Court in **(2009) 1 MLJ (Cr1) 133 [Pattu v. State]**, wherein the legal position with regard to the accident register has been succinctly stated. It is relevant to extract paragraph No.21:

"21. The doctor is not at all concerned as to who has committed the offence, as his primary effort is to save life. See *Pattipatti Venkaiah v. State of A.P.* AIR 1985 SC 1715 : (1985) 4 SCC 80 : (1986) MLJ (Cr1) 23, paragraph 17. Further, the doctor can also ignore any statements made by persons who brought the injured for treatment either to the occurrence or as to the name of the assailants, whether known or unknown. See *Basheer v. State* 1993 Cr1.L.J.2173." It is also relevant to extract paragraph 19 of the decision of this Court in **(2007) 1 MLJ (Cr1) 319 [Annamalai v. State]**:

"19. The Madras Medical Code (Vol.I) Section 10 paragraph-622 gives guidelines or instructions to the doctor as to how the columns in wound certificate are to be filled up. Para-622 (vi) reads:

"Medical officer should ascertain and incorporate in the certificate only the alleged cause as to the manner in which the injuries were inflicted, the weapon used and the time."

The Medical Officer should ascertain the cause of the injury, weapon used, time, etc. thereby showing no power is vested upon the Medical Officer, to ascertain from the

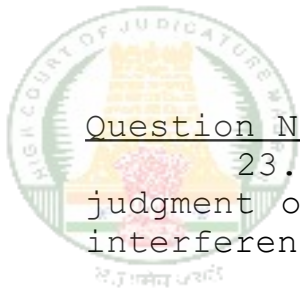


injured or the person accompanied the injured, who is the cause for the assault, whether it is known or unknown even. The doctor is concerned, to ascertain and incorporate in the certificate, how the injuries were inflicted and what is the weapon used, including the time, so as to find out, at later point of time, whether the injury would have been caused by the weapon produced on behalf of the prosecution said to have been used by the assailants on the basis of the recovery, if any. In this view, if the doctor had incorporated about the statement made by the person who brought the deceased, that can be ignored, which appears to be the dictum of the Apex Court also in Basheer v. State 1993 (Crl.L.J. 2173)."

20.It also prima-facie appears that the fatal overt act has been mainly attributed against the absconding accused in P.R.C.No.62 of 2014, which is still pending on the file of the Court of Judicial Magistrate, Pattukottai. As rightly pointed out by the trial Court, though the injured survived for 3 days from the date of fatal attack, the investigation officer P.W.14 did not take any steps to seize the treatment records and file it as exhibit and also failed to examine the causality medical officer, attached to Thanjavur Government Medical College Hospital in that record.

21.Though it is argued by the learned counsel appearing for the appellant that the names of the rest of the eyewitnesses did not find a place in Ex.P.1 - complaint, in the light of settled legal position that F.I.R. is not the encyclopedia of all dates and events and it is only a document to enable the prosecution to commence the investigation, the evidence let in by the prosecution coupled with the testimony of P.W.14 would clearly disclose that the rest of the eyewitnesses other than P.Ws.1 and 2 would not have been present in the scene of occurrence. Though it was also brought to the knowledge of this Court that pursuant to the orders of transfer passed by this Court, further statements of the witnesses were recorded after a distance point of time, by eliciting material contradiction through the testimony of P.W.14, the private respondents were able to establish that the other eyewitnesses were not present in the scene of crime and even from the testimonies of P.Ws.1 and 2 with regard to the over tact on the part of the present private respondents/accused there were vital material discrepancies.

22.In the light of the well settled legal position with regard to the interference in the orders of acquittal as enunciated in the decision of the Hon'ble Apex Court cited above, this Court finds no tenable reasons to interfere with the order of acquittal passed by the trial Court.



Question No. [ii] :

23. In view of reasons assigned above, the impugned judgment of acquittal passed by the trial Court does not warrants interference.

24. The learned counsel for the appellant/wife of the deceased has brought to the knowledge of this Court that she is in a state of penury on account of the fact that the sole breadwinner/her husband died in terrific circumstances and hence prays for compensation in terms of Section 357-A Cr.P.C. and on the said submission, this Court heard the learned Additional Public Prosecutor appearing for the State also.

25. The appellant is at liberty to submit a representation in this regard to the District Legal Services Authority, Thanjavur within a period of three weeks from the date of receipt of a copy of this order and the District Legal Services Authority, Thanjavur is directed to consider the said representation in terms of Section 357-A Cr.P.C. and take appropriate steps and inform the decision to the appellant within six weeks thereafter.

26. In the result, this Criminal Appeal is dismissed confirming the judgment dated 05.04.2017 made in S.C.No.111 of 2015 by the Principal District Judge, Pudukkottai. It is made clear that the findings given herein are only for the disposal of this Criminal Appeal and this Court do not touch upon the merits of the pending committal proceedings/trial in P.R.C.No.62 of 2014, pending on the file of the Court of Judicial Magistrate, Pattukottai and the trial Court on committal is to adjudicate the case on merits depending upon the evidence adduced. Since the proceedings are going on for a decade, the first respondent police is directed to take necessary steps to apprehend the absconding accused and if necessary, also take steps to split up the case in respect of the remaining accused, who are facing committal proceedings in P.R.C.No.62 of 2014.

Sd/-

Assistant Registrar

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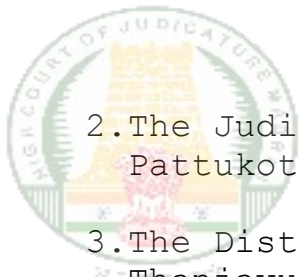
Sub Assistant Registrar(CS)

sj

To

1. The Principal District and Sessions Judge,

<https://hcservices.courts.gov.in/>



2.The Judicial Magistrate,
Pattukottai.

3.The District Legal Services Authority,
Thanjavur District.

4.The Superintendent of Police,
Thanjavur District.

5.The Inspector of Police,
Madhukkur Police Station,
Thanjavur District.

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

Copy to: The Section Officer,
Criminal Section Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.M.RAMU, Advocate SR-76733.

+1 CC to Mr.A.THIRUVADI KUMAR, Advocate SR-76692.

Crl. A. (MD) No.291 of 2017
19.07.2019

CS (07.08.2019) 16P 11C