



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl. A. (MD)No.389 of 2017

Seethalakshmi

... Appellant/P.W.1

Vs.

1.The STATE

By the Inspector of Police,
Odaipatti Police Station,
Theni District.

... 1st Respondent/Complainant

2.Karuppasamy

3.Katturaja

4.Kannusamy

5.Rajeshwari

6.Manikandan

7.Kavitha @ Dhanalakshmi

8.Umil @ Eswaran

9.Ambika

10.Sarasu

11.Pratheebe

12.Suruliraj @ Suruli

13.Periya Vellammal @ Vellammal

14.Kanagaraj

15.Chellammal

16.Pothumani

17.Dhanam

... Respondents 2 to 17/A1 to A16

Prayer : Criminal Appeal filed under Section 372 of the Criminal Procedure Code, against the judgment of acquittal made in S.C.No.131 of 2014 by the Additional District and Sessions Court, Theni at Periyakulam dated 19.07.2017 acquitting the respondents 2 to 17 for the offence punishable U/s. 148, 436, 506(ii) & 302 (2 counts) of the I.P.C. and Section 3(1) of the TNPPDL Act.



For Appellant

: Mr.D.Venkatesh

For 1st Respondent

: Mr.K.Dinesh Babu
Additional Public Prosecutor

For Respondents 2 to 17

: Mr.N.Satheesh Kumar

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J U D G M E N T

(Judgment of the Court was delivered by **B.PUGALENDHI, J.**)

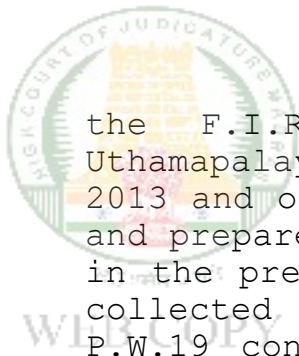
The appellant is P.W.1 in S.C.No.131 of 2014 on the file of the learned Additional District and Sessions Judge, Theni @ Periyakulam. Based on her complaint, the respondent police registered a case as against the respondents 2 to 17 in Crime No.42 of 2013 and after completion of investigation a final report was filed before the learned Judicial Magistrate, Uthamapalayam. The case was committed to the Court of Sessions and tried by the learned Additional District and Sessions Judge, Theni @ Periyakulam in S.C.No.131 of 2014. During trial, charges were framed against respondents 2 to 17/A1 to A16 for the commission of offences under Sections 148, 436, 506(ii), 302 (2 counts) and Section 3(1) TNPPDL Act. After completion of trial, the learned Sessions Judge has acquitted the accused from the charges framed against them. As against the judgment of acquittal by the trial Court, the appellant has preferred this Criminal Appeal.

2.The case of the prosecution in nutshell is as follows:

2.1.The respondents 2 to 17 on the date of occurrence i.e., on 07.04.2013 at about 1.15 p.m., in order to murder the deceased, namely, Manikandan and Krishnan, formed an unlawful assembly with deadly weapons and attacked the deceased persons and in order to save their lives, the deceased persons went into the house of P.W.15, brother of deceased Krishnan, and locked the house from inside. The respondents 2 to 17 after causing damage to the house of P.W.2, mother of deceased Krishnan, damaged the window of the house of P.W.15 and put paddy straw inside the house of P.W.15, poured Kerosene, locked the door from outside and set fire. When P.Ws.1, 2 and 10 tried to save the deceased persons, respondents 2 to 17 threatened to kill them. The deceased persons succumbed to the injuries on account of the fire. On seeing the same P.W.1, went to the Police Station and lodged Ex.P.1 complaint.

2.2.P.W.17, the Sub-Inspector of Police, Odaipatti Police Station, on 07.04.2013 at about 4.00 p.m. received the complaint from the wife of the deceased Manikandan (P.W.1) and registered a case in Crime No.42 of 2013, for the commission of offences under Sections 147, 148, 436, 302 r/w 149 I.P.C. and Section 3(1) TNPPDL Act. and despatched the Printed F.I.R. [Ex.P.11] to the Court.

2.3.On receipt of the information regarding registration of



the F.I.R., P.W.19 - V.Sabbani, the Inspector of Police, Uthamapalayam Circle, took up the investigation in Crime No.42 of 2013 and on 07.04.2013 at 5.30 p.m. went to the place of occurrence and prepared Observation Mahazar (Ex.P.2) and Rough Sketch (Ex.P.13) in the presence of P.W.7 - Shanmugavel and P.W.10 - Muthu. He also collected ash (M.O.2) under a cover of mahazar Ex,P.4. Thereafter, P.W.19 conducted inquest in the presence of Panchayatars and the inquest report is marked as Ex.P.15. Thereafter, P.W.20 handed over the dead body to P.Ws.13 and 14, Police Constables for conducting postmortem. He also examined P.Ws.1, 2, 3, 5, 7, 8, 9, 10, 15 and one Chinnasamy and recorded their statements.

2.4.P.W.16 is the doctor who conducted the postmortem and on internal examination on the body of deceased Manikandan, he found the following:

"Skull intact, brain - liquified, Trachea and lungs - shot particles present, Heart liquified, Abdomen - burned, intestine present around the abdomen, liquified, bladder empty.

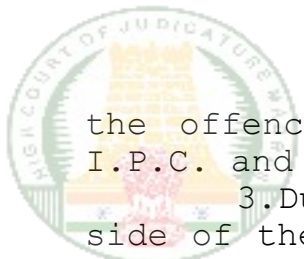
And on internal examination on the body of deceased Krishnan he found the following:

"Skull - No evidence of fracture, brain - liquified, Hyoid intact, Trachea, lungs shot particles present & liquified heart empty & liquified, Abdomen, Stomach, intestine liquified, Bladder empty.

The postmortem certificates are marked as Exs.P.9 and 10 and the doctor P.W.16 gave his final opinion that the death would have occurred 14-18 hours prior to autopsy due to 100% burns with shock and Asphyxia.

2.5.On information, P.W.19 arrested A8 and A14 on 08.04.2013 at about 4.00 p.m. near Odaipatti Piruvu and sent them to judicial custody. On 10.04.2013 at about 4.00 p.m. he arrested A3 near Sibbalakottai and remanded him to judicial custody. On 11.04.2013, at about 3.30 p.m. he arrested A4 and A5 near Chinnamanur Bus Stand and remanded them to judicial custody. On 21.04.2013 at about 12.30 p.m. he arrested A1 and A2 near Appipatti Vellaiammalpuram Four Road Junction in the presence of one Kaliappan (P.W.11) and Pommaisamy (P.W.12) and recorded the confession statement voluntarily given by A1. Pursuant to the admissible portion of the confession leading to recovery - Ex.P.16, P.W.19 recovered M.O.1 - 5 litre White colour Kerosene Can near the place of occurrence under a cover of mahazar, Ex.P.17. On 18.04.2013, A3 and A7 Surrendered before the Court of learned Judicial Magistrate No.4, Madurai. Thereafter, P.W.19 was transferred.

2.6.The investigation Officer P.W.20 continued the investigation and on 26.08.2013 at about 11.30 a.m. he arrested A9, A10, A12, A15, A16 at Appipatti Bus Stop and remanded them to judicial custody. On 19.10.2013, he arrested A6 and A11 and remanded them to judicial custody. He examined P.Ws.16, 18 and 21 and recorded their statements. After completing the investigation, he filed his final report as against the accused on 02.12.2013 for



the offences under Sections 147, 148, 436, 506(ii), 302 r/w 149 I.P.C. and Section 3(1) TNPPDL Act..

3. During the trial, 21 witnesses have been examined on the side of the prosecution and 18 documents were marked and 4 material objects were produced in support of the prosecution case. When the incriminating materials were put to the accused under Section 313 CrPC, the accused denied the same. The accused have not examined any witness, however marked the copy of F.I.R. in Crime No.41 of 2013 on the file of Odaipatti Police Station as Ex.D.1 in support of their case.

4. The available evidence of the prosecution are as follows:

P.Ws.1 to 3 and P.W.5 were examined as eye-witnesses to the occurrence and among these witnesses P.W.1 is the wife of deceased Manikandan, P.W.2 is the mother of deceased Krishnan, P.W.3 is the mother of deceased Manikandan and P.W.5 is the wife of deceased Krishnan. P.W.4 and P.W.5 were examined to prove the presence of the accused in the place of occurrence, however, they turned hostile. P.W.7 and P.W.10 were examined for the observation mahazar and recovery from the place of occurrence, however, P.W.7 turned hostile. P.Ws.8 and 9 are maternal aunt and uncle of deceased Manikandan and they are hearsay witnesses. P.W.11 and P.W.12 were examined as witnesses for the arrest, confession and recovery, however, they turned hostile. P.W.13 and P.W.14 are the Police Constables, who identified the dead bodies to the Doctor and recovered M.Os.3 and 4 from the body of deceased Manikandan. P.W.15 is the brother of deceased Krishnan and he is a hearsay witness, who also turned hostile. P.W.16 is the doctor, who conducted autopsy, P.W.17 is the Sub-Inspector of Police, who registered the F.I.R. P.W.18 is the Assistant Director, who examined the material objects. P.W.19 is the investigation officer, who conducted initial investigation and P.W.20 is the investigation officer, who filed the final report and P.W.21 is the person who assessed the value of damage.

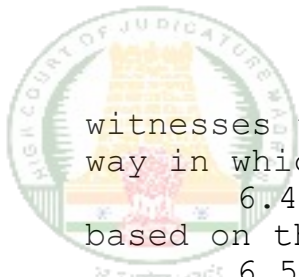
5. In conclusion of the trial, the learned Trial Judge, by judgment dated 19.07.2017 found the accused not guilty of the offences and acquitted them of all the charges framed against them under Section 235(1) Cr.P.C. As against the judgment of acquittal the present appeal is filed.

6. The learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State/1st respondent, in unison, have raised the following points for the consideration of this Court:

6.1. The evidence of P.W.s 1 to 3 and 5, eyewitnesses, is clear and cogent with regard to the motive for the occurrence, the place of occurrence and the mode of occurrence.

6.2. P.Ws.8 and 9, who came to know about the occurrence from P.W.3 also corroborated the case of the prosecution.

6.3. There is no contradiction between the evidence of eye



witnesses with regard to the persons committed the offence and the way in which it was committed.

6.4.The trial Court failed to consider the recovery of M.O.1 based on the admissible portion of the confession statement of A.1.

6.5.The evidence of P.Ws.17, 19 and 20 established the factum of F.I.R. registered as against the deceased persons prior to the occurrence and that itself would prove the motive for the accused to murder the deceased persons.

6.6.The FIR is not an encyclopedia and each and every minute details need not be stated in it and as such the conclusion arrived by the trial Court that the evidence of P.W.1 is not in conformity with Ex.P.1 - complaint is erroneous.

6.7.The learned trial Judge has magnified every minute details to throw a doubt on the entire case of the prosecution.

7. Per contra, the learned Counsel appearing for the respondents 2 to 17/ accused Nos.1 to 16 has made his submissions supporting the order of acquittal passed by the trial Court. The learned Counsel by referring to Ex.D.1 would submit that it is a case of case in counter and the counter case was registered in Crime No.41 of 2013 at the instance of accused No.8 for the offence under Section 307 I.P.C. for the occurrence that took place at 3.15 p.m. as against the deceased 1 and 2. According to the case in Crime No.41 of 2013, one Karthick, brother of deceased Manikandan abused and threatened one Vijalakshmi, hence, she lodged a complaint against the said Karthick on 16.12.2012 and he was arrested in connection with the said case. On the same day, the deceased persons quarrelled with Arivuraja, husband of Vijayalakshmi and based on the complaint of Arivuraja, a case has been registered against the deceased. In view of the said enmity, on 07.04.2013 at about 12.30 p.m. the deceased indiscriminately cut husband of A8, A1 to A5 and others and the husband of A8 was referred to Government Hospital, Theni for further treatment. Based on the complaint of A8, a case was registered in Crime No.41 of 2013 and the same was also admitted by the investigation officer - P.W.19 in his evidence. Further, P.W.19 has admitted that accused have also sustained injuries and they were taking treatment. But this case in Crime No.41 of 2013 has not been placed before the trial Court and the injury details of the accused in this case have not been collected by the investigation officer and have not been placed before the trial Court. Therefore, it is heavily contended by the learned counsel appearing for respondents 2 to 17 that investigation officer has deliberately suppressed the registration of the counter case against the deceased persons.

8.By relying upon the dictum laid down by the Hon'ble Supreme Court **Mohd. Akhtar v. State of Bihar [(2019) 2 SCC 513]**, the learned Counsel would contend that if two views can be reached, then the view in favour of the accused has to be given weight and the Court



must be reluctant in interfering with the order of acquittal.

9. This Court paid its anxious consideration to the rival submissions and also perused the available records.

10. 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 court."

11. 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,

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



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."

12.Keeping this in mind, this Court proceeded with the present case on hand.

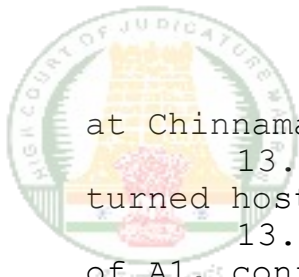
13.The trial Court disbelieved the evidence of the prosecution witnesses for the following reasons:

13.1.There are contradictions between the evidence of P.W.1 and her complaint Ex.P.1 and the evidence of P.W.2 and P.W.1. P.W.2 did not depose that the accused have threatened them.

13.2. According to P.W.3 at the time of occurrence she was working in the garden and when she came there, she saw there was fire in the house and therefore, she cannot be an eyewitness.

13.3. P.Ws.4 and 6, who have been examined to depose about the presence of accused in the place of occurrence have turned hostile.

13.4. According to P.W.5, she came to know about the occurrence from others. Further, according to P.W.5, who is said to have accompanied P.W.1 to lodge the complaint deposed that she did not go to the Police Station and her signature was obtained only



at Chinnamanur Hospital.

13.5. P.W.15, who claimed to have witnessed the occurrence turned hostile.

13.6. P.W.11 and 12, who have been examined regarding arrest of A1, confession and recovery also turned hostile.

13.7. P.W.21, who has been examined to depose about the estimation of damage caused, deposed that he can assess only the damage caused to the wooden article and he did not know whether there was wooden window in the house.

14. Having stated so, the trial Court, extended the benefit of doubt to the accused. After a careful analysis of the evidence available on record, this Court finds no infirmity in the finding of the trial Court regarding the contradictions exposed.

15. Admittedly, it is a case of case in counter and both parties sustained injuries in the same occurrence. The complaint of P.W.1 was entertained at 4.00 P.M. and that of A.8 at 3.15 P.M. Both the deceased and A.1 and others were forwarded to the Government Hospitals for treatment. As such, two persons viz., the deceased sustained injuries on their side and atleast seven persons sustained injuries on the side of the accused and all were treated in the Theni Medical College Hospital and the Madurai Government Rajaji Hospital. Admittedly, the injured accused were in the hospital for a considerable time for the injuries sustained by them. In our opinion, the injury sustained by the accused and others should have been explained by the prosecution witnesses i.e. P.Ws.1 to 3 and 5. However, the injuries sustained by the accused remains unexplained.

16. Further as admitted by P.W.19, a case was duly registered in Crime No.41 of 2013 on the complaint of the 8th accused. P.W.19 though deposed that there was investigation done by him in the said Crime No.41 of 2013, there is no document available on record to prove the same. It is needless to say that under 588-A of the Police Standing Order, the respondent police is bound not only to investigate the counter case, but also to produce the F.I.R., complaint, statements and other records in connection with counter case and exhibit the same in evidence. In this case, the prosecution has miserably failed to do the same. Therefore, we find every force in the submissions made by the learned counsel for the respondents 2 to 17/accused 1 to 16 that the prosecution has suppressed the genesis of the occurrence.

17. A perusal of the postmortem certificates would show that the deceased persons died due to 100% burns with shock and Asphyxia. No weapon was recovered from the accused. Before the incident the deceased persons indiscriminately cut atleast seven persons. But in the absence of any clear evidence to show as to who was the



aggressor, it is very difficult to say that the accused was the aggressor.

18. At this juncture, it is relevant to extract the following decisions of the Hon'ble Apex Court:

(i) **Lakshmi Singh v. State of Bihar** reported in **1976 Supreme Court Cases (Cri) 671**, wherein it is held as follows:

"In a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:

1. *that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;*
2. *that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;*
3. *that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.*

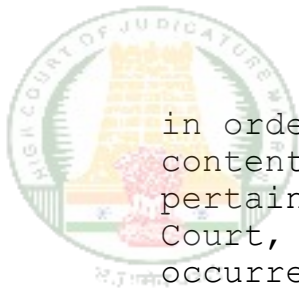
The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.

Puran Singh v. State of Punjab, (1975) 4 SCC 518 : 1975 SCC (Cri) 608 and State of Gujarat v. Bai Fatima, (1975) 2 SCC 7 : 1975 SCC (Cri) 384, relied on.

However there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries."

(ii) In **RATHINAM @ RATHINASAMY & OTHERS Vs. THE STATE REP. BY THE INSPECTOR OF POLICE, VIRUDHUNAGAR {2008 (2) C.L.T - 22}**, it has been observed as follows:-

"From the very evidence available through the investigator, it could be seen that both the crime numbers namely 20/97 and 21/97, a part and parcel of the same transaction. If that be so, the law would mandate that the prosecution must place all the material fact before the Court



in order to find out the truth or otherwise of the respective contentions. So long as the material papers and records pertaining to Crime No.21/97 are not produced before the Court, the Court cannot find out even the genesis of the occurrence. Further, when four of the accused were also sustained injuries and they were sent for medical examination. Pursuant to the registration of Crime No.21/97 which is part and parcel of the transaction in question, the prosecution should have produced all the necessary facts. It is pertinent to note, not even the FIR, statements recorded, would certificates, final report or any one of the material pertained to Crime No.21/97 was placed before the Court. When the lower Court has thoroughly failed to consider this aspect of the matter in the considered opinion of the Court so long as all the materials were not placed before the Court, the Court cannot find out the truth or otherwise of the prosecution case to adumbrate justice, in accordance with law, and hence the prosecution has miserably failed to produce those documents and suppressed them, by which the prosecution case cannot be accepted."

19. The case laws referred to above are directly applicable to the facts and circumstances of the case on hand. The prosecution has not come out with clean hands and presented the full facts before the Court. It is unfortunate that the Investigating Officer did not take any effort in receiving the wound certificates issued for the accused and marking the same before the trial Court. The Medical Officers, who treated the accused, were not examined before the trial court. On a perusal of the graphic narration of the facts made in the complaint lodged by A.8 and taking note of the aspect that the injuries sustained by the accused were not explained, we are of the view that the occurrence would not have taken place in the manner as put forth by the prosecution. The investigation in both the cases should have been taken up in the manner known to law, but, it is unfortunate that the injuries sustained by the accused were not explained and vital facts were suppressed and withheld by the prosecution. The genesis and origin of the prosecution case itself is quite doubtful. Failure/omission on the part of the prosecution to explain the injuries on the person of the accused would assume much importance in a case of this nature where the evidence consists of interested or inimical witnesses; therefore, in the light of the above discussion and the reasons adverted to by us, we hold that the respondents 2 to 17/A1 to A16 are entitled to benefit of doubt.

20. Since the present appeal is against an order of acquittal, this Court, in view of the contradictions in the evidence of the prosecution as stated above and in view of the legal position is not inclined to interfere with the order passed by the learned Additional District Sessions Judge, Theni at Periyakulam in



S.C.No.131 of 2014, dated 19.07.2017. Accordingly, the Criminal appeal is dismissed.

Sd/-

Assistant Registrar (CS II)

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/ /2020

Sub Assistant Registrar(CS)

sj

To

- 1.The Additional District and Sessions Judge,
Theni at Periyakulam.
- 2.The Judicial Magistrate,
Uthamapalayam.
- 3.The Inspector of Police,
Odaipatti Police Station,
Theni District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.N.SATHISH KUMAR, Advocate (SR-773[F] dated
08/01/2020)

+1 CC to M/s.D.VENKATESH, Advocate (SR-838[F] dated 08/01/2020)

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