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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

CORAM:

THE HON'BLE MR.JUSTICE V. BHARATHIDASAN

Cr1.A.No.669 of 2012

State represented by
Inspector of Police,
CBI, ACB, Chennai.

... Appellant/Complainant

Versus

1. Shri S.Karnan,
S/o. Late Subba Thevar

2. Shri Pachaianan,
S/o. Late Chenniappan

3. Shri P. Senthil Kumar,
S/o. Shri Pachianan

... Respondents/Accused

PRAYER : Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, to allow this appeal and set aside the judgment dated 17.05.2012 pronounced by Ld. IX Additional Special Judge for CBI Cases, Chennai in C.C.No. 3 of 2008.

For Appellant : Mr.K.Srinivasan,
Special Public Prosecutor

For Respondents : M/s.C.S.S.Pillai
Maruthiraj for R1

M/s. V.Udayakumar
B.Ramya for R2 & R3

ORDER

Against the order of acquittal of respondents passed in C.C.No.3 of 2008 dated 17.05.2012 on the file of IX Addl. Special Judge for CBI Cases, Chennai, the appellant CBI, ACB is before this Court with this Appeal.

2. Totally, there are three accused. The accused 1 to 3 were charged with for the offence under Sec.120-B r/w 420, 511, 468 I.P.C. and Sec.13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. The Trial Court, after full-fledged trial, acquitted all the three accused. Now, challenging the acquittal, the present Criminal Appeal has been filed.



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3. The case of the prosecution is that, A1 was working as Sub-Inspector of Police at Koovathur Police Station, Kancheepuram District between June 2001 and December 2002. On 21.12.2001 at about 06.30 p.m., one P.Venkatachalam, an employee of M/s.Cummins Diesel Sales and Services India Limited, returning from Pondicherry to Chennai, in a two wheeler, and at Veppenchery near Mamallapuram, he had dashed his two wheeler against a stationery lorry bearing Regn. No.MSV 8007, and sustained grievous injuries and died on the spot. On the next day at about 08.10 a.m., the Regional Manager of the company, in which the deceased was working, had filed a complaint before the Koovathur Police Station, Kancheepuram, wherein 1st respondent/A1 was working as Sub-Inspector of Police. Based on which, a F.I.R., in Crime No.421 of 2001 has been registered for the offence under Sec.279 and 304(A) I.P.C. After completing investigation, he has filed a final report on 14.03.2002 against P.W. 1 (Approver) in this case on the ground that, he was the owner cum driver of lorry bearing Regn. No. TN-04-B-1656, while overtaking the stationery lorry, he dashed against two wheeler of deceased and caused his death. P.W.1 appeared before the Judicial Magistrate, Thirukalukundram and admitted his guilt, and he was convicted and imposed with a fine of Rs.3000/- and he has also paid the fine on the very same day. Later on, A2 and A3, father and brother of deceased along with mother of deceased, filed a claim petition in M.C.O.P.No. 725 of 2002 before the Motor Accident Claims Tribunal, Salem, seeking compensation of Rs.96 lakhs for the death of said Venkatachalam in the road accident. During the pendency of the claim petition alleging that it is a fake claim, and the lorry owned by P.W.1 was not involved in the accident, the insurer of the lorry requested DIG, CBCID, Chennai to reinvestigation about that case. Based on the request, an investigation was ordered and it was transferred to District Crime Branch, Kancheepuram, the same was also re-registered in Crime No. 8 of 2005 and District Crime Branch took up investigation. Pending investigation by D.C.B., the insurance companies approached this Court seeking for direction to direct CBI to investigate into large number of fake insurance claims including the present case. This Court by an order dated 22.12.2006 transferred the investigation to C.B.I. Based on that direction, the appellant CBI, ACB took up investigation.

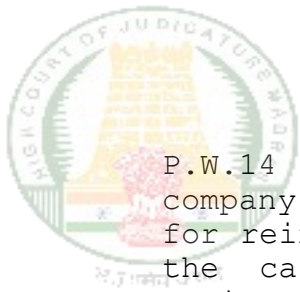
4. The reinvestigation by CBI revealed that the deceased Venkatachalam, while driving motorcycle dashed against stationery lorry bearing Regn. No.MSV - 8007, and sustained injury and died on the spot. Thereafter, A2 and A3 approached P.W.1, and convinced him to falsely implicate his lorry bearing Regn. No.TN-04-B-1656 enabling them to file a claim petition seeking compensation. Accepting their request, P.W.1 approached the 1st respondent, and A1 to A3 hatched a conspiracy, in furtherance of the same, A1 has prepared a false inquest report on 21.12.2001 stating that the deceased,



to avoid hitting a stationery lorry, swerved to a right, and he was hit by the lorry driven by P.W.1. which is coming in the opposite direction, and sustained injury and died on the spot, and filed a final report before the learned Judicial Magistrate, Thirukalukundram. In furtherance of the above said criminal conspiracy, A2 and A3 filed a claim petition seeking compensation of Rs.96 lakhs before MACT, Salem. However, P.W.1, owner of the lorry had given a statement under Sec.164 (1) Cr.P.C. admitting his guilt and stated that he had falsely implicated himself as accused and paid the fine at the request of A2 and A3. After recording statement of P.W.1, the learned Judicial Magistrate tendered pardon on 10.12.2007 under Sec.306 Cr.P.C. After completing investigation, the appellant C.B.I. filed the final report. Considering those materials, the trial court taken cognizance of offence, and framed charge as mentioned above.

5. In order to prove the case, the prosecution examined as many as 22 witnesses and marked 57 exhibits. Out of 22 witnesses examined, P.W.1, owner cum driver of lorry. According to him, at the request of A2 and A3, in order to help their family to get compensation, he has falsely implicated himself as accused and paid the fine amount. P.W.2, who said to be present nearby the scene of occurrence. According to him, after hearing noise, he found motorcycle dashed against stationery lorry and the deceased died on the spot. P.W.3, driver of stationery lorry bearing Regn. No.MSV-8007, according to him, while he was coming back from Pondicherry to Chennai, his lorry was broke down and when he was sitting near the lorry, at that time, he heard a noise from back side of lorry, wherein he found deceased with serious injuries. P.W.4, who is a partner of M/s.M.Arunachalam and company and he is owner of stationery lorry bearing Regn.No. MSV-8007. P.W.5 is the partner of the firm by name M/s.Power Care Solutions and doing work such as servicing of diesel generators. P.W.6 is the Proprietor of M/s.Jothi Vinayaga Auto carriage. According to him, he was informed that the lorry bearing Regn.No.MSV-8007 was broken down near Pallar bridge and he was asked to get the lorry repaired. P.W.7 is the Advocate, who was appearing for the accused in a Motor Accident Claims Tribunal at Salem. P.W.8 is a Head Constable working at Koovathur Police Station, and he has made entry regarding the accident in the general diary. P.W.9 is the Auto Spare Parts dealer at Chennai, wherein owner of stationery lorry asked him to send some spare parts.

6. P.W.10 is the Regional Manager of M/s. Cummins Diesel Sales and Services India Ltd., wherein the deceased was working as Engineer. P.W.11 is the co-employee of the deceased. P.W.12 is working as Head Constable at Koovathur Police Station and he has maintained the records and made entry about the accident in the general diary maintained in the police station. P.W.13 is running a travels company at Mahabalipuram, who helped P.W.10 in writing the complaint.



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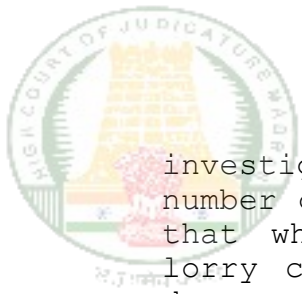
P.W.14 is working as Divisional Manager in the insurance company, who spoke about the filing of Writ Petition seeking for reinvestigation by CBI and as per the order of this Court, the case was transferred to CBI. P.W.15 is working as Assistant Manager in United India Insurance Company. He has spoken about the request made by them for reinvestigation. P.W. 16 is working as Judicial Magistrate at Chengalpattu, who has recorded the statement of P.W.1 under Sec.164 of Cr.P.C. P.W.17 is the Inspector of Police, Kalpakkam. He has spoken about the earlier F.I.R. registered by A1. P.W.18 is the Licensed Insurer of the Insurance Company. P.W.19, who was working as Zonal Deputy Tahsildar and he has issued the residential certificate of A3. P.W.20, was working as Principal Scientific Officer in the Central Forensic Lab, Chennai. He has examined the forged document. P.W.21, is a Judicial Magistrate recorded the statement of one Sivam under Sec.164 of Cr.P.C. P.W.22 is the Investigating Officer, who has conducted the investigation and filed the final report.

7. The incriminating materials are put to the accused under Sec.313 Cr.P.C. and they denied the same. The accused have not examined any of witnesses or marked any of documents. Considering all those materials, the trial court acquitted all the accused from all the charges. Challenging the order of acquittal, the present appeal has been filed before this Court.

8. Heard submissions of both the learned counsel appearing for appellant and respondents and perused the material carefully.

9. A1, in this case was the Sub-Inspector of Police, in Koovathur Police Station, who has conducted the investigation about the accident. A2 is father of deceased. A3 is brother of deceased. P.W.1 Mariappan, who turned as approver, is the owner-cum-driver of the lorry bearing Regn. No.TN-04 B-1656. It is the case of prosecution that the deceased riding IN a two wheeler, dashed against stationery lorry, bearing Regn. No.MSV-8007 and died. Thereafter, all the accused conspired together and in furtherance of the conspiracy, they have approached P.W.1, and convinced him to falsely implicate himself as accused in the said road accident as if his lorry was involved in the accident, enabling him to get compensation. Accepting their request, PW.1 has admitted his guilt and paid fine. Thereafter, he appeared before the Judicial Magistrate and given a statement under Sec.164(1) Cr.P.C., wherein he has stated that, his lorry was not involved in the accident, and he was compelled to implicate himself as accused in this case, pardon was granted to him and he was treated as approver.

10. The prosecution mainly relying upon the statement of P.W.1 (approver) and implicated all the accused for the above said offence. The accident was taken place on 21.12.2001. Immediately A1 rushed to scene of occurrence, and commenced



investigation, and conducted inquest, in which, registration number of P.W.1's lorry has been mentioned, and clearly stated that while deceased overtaking a stationery lorry, P.W.1's lorry came in the opposite direction and dashed against the deceased. According to P.W.1, A2 and A3 approached him in the month of January 2002, during Pongal festival and asked him to implicate himself in the accident. Only thereafter, he admitted his guilt and paid the fine. Even though some of the witnesses present during the inquest, disowned their signature, the trial court has held that the prosecution did not conduct any investigation to compare their signature by sending it to the expert. That apart, it is not the case of prosecution that fine amount has been paid by A2 and A3, it is only P.W.1, who has paid the fine amount on his own, which creates some suspicion. The Trial Court, considering all those materials, came to a conclusion that, the evidence of P.W.1, approver is not trustworthy and it cannot be relied upon.

11. So far as other witnesses are concerned, P.W.2 and 3, who are said to be the eye-witnesses to the occurrence. Even though both of them were available at the time of accident, from their evidence, it could be seen that they are not eye-witnesses to the occurrence and both of them have admitted that after hearing the noise, they came out and saw that bike was lying under the stationery lorry. In the said circumstances, the trial court come to a conclusion that P.W.2 and 3 are not eye-witnesses to the occurrence, and their evidence cannot be considered to hold that the deceased dashed against stationery lorry. Even though P.W.2 and 3 have stated that at the time of accident, there was no other vehicle plying in that road, to substantiate the same, the prosecution has not taken any steps to collect the particulars regarding vehicle passing through the scene of occurrence at the time of accident. So far as conspiracy theory is concerned, absolutely there is no materials available on record to show that A1, who is Inspector of Police has conspired with A2 and A3 and created false records, thereby committed the offence. Apart from that, the trial court after considering materials, has held that the prosecution has failed to establish how the accident has taken place. The Trial Court after considering all those materials extensively came to a conclusion that, the prosecution had failed to prove the charges levelled against the accused and consequently acquitted all the accused.

12. It is settled principal of law that, after securing an order of acquittal, there is double presumption occurred in favour of the accused. Firstly, the fundamental principle of criminal justice delivery system that, every person, accused of committing an offence shall be presumed to be innocent, unless their guilt is proved by a competent Court of law. Secondly if the accused has secured an order of acquittal, the presumption of their innocence is reaffirmed and strengthened by the trial Court. Even if two reasonable conclusions are possible on the basis of evidence on record, the appellate



Court should not disturb the finding of the acquittal recorded by the trial Court.

13. The Trial Court after considering the entire evidence, both oral and documentary extensively, came to a conclusion that the prosecution failed to prove the charges and acquitted the accused. In the above circumstances, I find no illegality or perversity in the judgment of the trial Court and there is no reason to interfere with the order of acquittal passed by the trial Court. Hence, the appeal fails and the same is deserves to be dismissed.

14. In the result, the Criminal Appeal is dismissed. The judgment of the trial Court in C.C.No.3 of 2008 dated 17.05.2012 is hereby confirmed.

Sd/-
Assistant Registrar (CS-CCC)

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Sub Assistant Registrar

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To

1. The Inspector of Police,
CBI, ACB, Chennai.
2. The Public Prosecutor,
High Court, Madras.
3. The IX Additional Special Judge,
IX Additional City Civil Court,
for CBI Cases, Chennai-104.
4. The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.K.Srinivasan, Advocate SR.No.67646

+1cc to Mr.V.Udayakumar, Advocate SR.No.67548

CRL.A.No.669 of 2012

BR(CO)
GMY(24/01/2022)