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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.07.2021

Pronounced on : 13.07.2021

C O R A M

THE HON'BLE MR.JUSTICE P.N.PRAKASH
AND
THE HON'BLE MR.JUSTICE R. PONGIAPPAN

Criminal Appeal No.326 of 2021

V.Prakash ... Appellant/ Defacto-complainant

-vs-

1. The State Rep. By
Inspector of Police,
Arakandanallur Police Station,
Villupuram District.
(Crime No.255 of 2016)

... Respondent/Complainant

2. Rajagopal

3. Sambath

... Respondents/Accused 1 and 2

Criminal Appeal filed under Section 378 (4) of the Code of Criminal Procedure, to call for the records and to set aside the judgment dated 01.03.2021 in S.C.No.87 of 2017 on the file of the learned Principal District and Sessions Judge, Villupuram and to convict the respondents 2 and 3/accused 1 and 2, for the charges framed against them.

For Appellant : Mr.S.Saravana Kumar

For Respondent : Mr.R.Muniyapparaj
Government Advocate (Crl.Side)

J U D G M E N T

R.PONGIAPPAN, J.

This appeal is directed against the order of acquittal dated 01.03.2021 made in S.C.No.87 of 2017, on the file of the learned Principal District and Sessions Judge, Villupuram.

2. The appellant viz., V.Prakash, is the defacto complainant in Cr.No.255 of 2016 on the file of the Arakandanallur Police



Station. Initially, this case has been taken on file against the respondents 2 and 3/A1 and A2 and both stood charged for the offences under Sections 294(b), 302 IPC or 304 (ii) of IPC. By judgment dated 01.03.2021, the trial Court held as follows:

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"As a result, the 1st accused is found guilty u/s. 294(b) of IPC and he is convicted and sentenced to pay a fine of Rs.500/- (Rupees Five hundred only), in default, to undergo simple imprisonment for five days.

1st accused and 2nd accused are found guilty u/s. 323 of IPC and they are convicted and sentenced to undergo simple imprisonment for 40 days and to pay a fine of Rs.500/- each, in default to undergo simple imprisonment for 10 days.

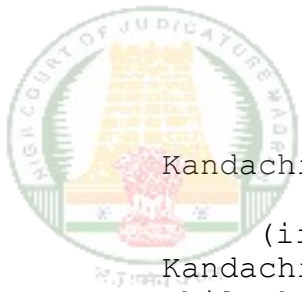
The said sentence of punishment shall run concurrently. The period of detention already undergone is ordered to be set off under section 428 of Cr.P.C.

As a result, the 2nd accused is found not guilty u/s.294 (B) of IPC, accused persons are found not guilty under sections 302 or 304 (ii) of IPC and they are acquitted from the above said charges under section 235(1) of Cr.P.C.

3. Challenging the said acquittal, the defacto complainant in the case referred to above, is before this Court, with the present Criminal Appeal, praying to set aside the order of acquittal under section 302 IPC or 304 (ii) of IPC against the accused.

4. The case of the prosecution is as follows:

(i) PW1-Prakash is the son of the deceased Vadamalai. PW3-Banumathi is the wife of the deceased. Previous to the occurrence, the 1st accused is holding all the amounts which belongs to 5 Firkas, which are all situated in the village, in which the defacto complainant, and the accused resides. After demonitization, the deceased Vadamalai instructed the 1st accused to disburse the amounts to the needy people. Lateron, on 22.11.2016, the 1st accused has given the amount to his Firka people and the same was not informed to Vadamalai. On 23.11.2016 at about 8.00am, near to bus stop, the deceased Vadamalai asked about the details of disbursement of money. Due to the same, 1st accused got wild and abused Vadamalai., also he slapped on his cheek and punched on the left side of the chest of Vadamalai. In the course of same transaction, the 2nd accused also punched on the left side neck of Vadamalai and due to the said attack made by both the accused, the blood ousted from the shoulder of Vadamalai and he fainted. In this regard, PW1 lodged a complaint before the Sub Inspector of Police,



Kandachipuram Police Station.

(ii) PW13-Kaliyamoorthy, the then Sub Inspector of Police, Kandachipuram Police Station, on 23.11.2016 at about 10.00 am while he was on duty received the complaint from PW1 (Ex.P1) and registered the case in Cr.No.255 of 2016. The printed FIR is marked as Ex.P2. After registration of the case, he handed over the copy of the FIR to the Inspector of Police for investigation.

iii) PW14-Jayavel, the then Inspector of Police, on 23.11.2016, after receipt of the FIR took up the same for investigation. On the same day, he visited the scene of occurrence and in the presence of Sakthivel [PW5] and one Chinnathambi, he prepared the observation mahazar under Ex.P3. He had drawn the rough sketch under Ex.P11. He examined the witnesses and recorded their statements. On the same day, in the presence of Panchayatars and witnesses, he prepared an inquest report under Ex.P12. Later, he sent a requisition to the hospital authorities for conducting postmortem over the dead body of the deceased Vadamalai.

(iv) PW12-Dr.Geethanjali, the Assistant Professor, Department of Forensic Medicine, Government Medical College, Villupuram, on 24.11.2016 received the requisition letter sent by PW14 and conducted post mortem over the dead body of the deceased Vadamalai, on the same day at about 1.45pm. During the time of post mortem, she found the following aspects:

"Rigor mortis present all over the lower part of the body.

- 1) Purple red color contused abrasion seen over Lt upper chest just below the Centre of Left Clavicle - 7 x 1 x 1cm (contusion) 1.5x1x1cm (abrasion),
- 2) Dark red abrasions seen over: a) Left knee over an area - 4 x 4cm - multiple small sized - 0.5 x 0.05cm
b) Right Knee - over an area - 4 x 4cm - multiple small sized - 0.5 x 0.5cm
c) back of middle 1/3rd of Rt thigh - 10 x 1cm - Linear, transversely placed.
- 3) Old healing abrasion with scab black in color seen over the dorsum of Lt thumb - 0.5 x 0.5cm
Age of injury : 3 - 5 days
II. On opening of the Head: Scalp, vault, Membrane - Intact, Brain - enlarged in size. Surface vessels are full and tortuous. Cut section - congested. Base of skull - Intact.
III. On opening of thorax: Ribs - Intact, Heart - enlarged in size.
Cut section - Left Ventricular Wall - thickened



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with white color bands of tissue scattered in-between. Great vessels multiple atheromatous plaques seen over the inner surface of root of Aorta, Coronaries - thickened and narrowed. Valves - Intact. Chambers - few grams of clotted blood seen. Both Lungs - Edematous. Multiple petechial haemorrhage seen all over lung surface. Cut section - congested.

IV. On opening of the Abdomen: Stomach - about 800 ml. of cream coloured fluid seen. No specific smell noted. Cut section - Mucosa intact, Liver, Spleen, both Kidneys - normal in size. Cut section - congested. Bladder - empty.

V. Hyoid Bone, Pelvis and spinal column - Intact."

She collected the heart and viscera and sent the same for chemical examination. Thereafter, she issued a postmortem certificate under Ex.P8. After the receipt of chemical examination report dated 09.12.2016 (Ex.P9), she gave a final opinion under Ex.P10. She has opined that the deceased would have died due to the effects of coronary artery heart disease with i) presence of pre-existing coronary disease, ii) presence of alcohol in the viscera, iii) presence of multiple simple injuries over the surface of the body. According to her, the death is not due to the assault made by the accused.

(v) In continuation of the investigation, PW14, seized the belongings of the dead body of the Vadamalai viz., White colour torn half sleeve shirt (MO1), White colour dhoti (4 yard) with ADMK Border (MO2) and Pale sandal colour torn trouser (MO3).

(vi) On 23.11.2016 at about 17.00 hours, near Mazhavanthangal Cross road, in the presence of PW11, Saravanan, the then VAO-Devanathanapetti and his Assistant, one Gunasekaran, PW14 arrested the accused and recorded their confession. The signature of PW11 found in the confession statement given by A1 and A2, is marked as Ex.P5 and Ex.P7 respectively. Later, he sent both the accused for judicial custody. He enquired the doctors and recorded their statements. After completing investigation, he came to the positive conclusion that both the accused committed the offence under Sections 294 (b) and 302 IPC and filed the final report, accordingly.

5. Based on the materials available, the trial Court framed charge for the offence under Sections 294 (b), 302 or 304(ii) IPC. Both the accused denied the charges and opted for trial. Therefore, the accused were put on trial.

6. During the course of trial proceedings, in order to prove



the case of prosecution, as many as 14 witnesses were examined on the side of the prosecution and 12 documents were exhibited as Ex.P1 to Ex.P12, besides, 3 material objects [i.e. M.O.1 to M.O.3].

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7. Out of the abovesaid witnesses, PW1-Prakash, PW2-Elumalai, PW6-Elumalai, PW7-Kannan and PW9-Aathimal, are all witness to the occurrence. There have all stated in their evidence as during the relevant point of time i.e. 23.11.2016 at about 8.00am, when at the time the deceased Vadamalai, questioned the 1st accused in respect to the disbursement of money which belongs to the villagers, both the accused abused the deceased by using filthy language, slapped on his cheek and also punched on the left side chest of Vadamalai. Further the 2nd accused also punched on the neck of Vadamalai. According to them, after the assault, the blood ousted from the shoulder of the Vadamalai and thereafter, he died on the spot.

(i) PW3, Banumathi, has stated in her evidence that during the relevant point of time, after hearing the hue and cry from the public, she reached the occurrence place and saw the dead body of her husband. PW4-Ramesh, has stated about the decision taken in respect to the disbursement of money, to the needy people.

(ii) PW5-Sakthivel, has stated about the preparation of observation mahazar and rough sketch. PW8-Lakshmi, has also deposed that when at the time she reached the occurrence place, she saw the wife of the deceased Vadamalai sitting nearby her husband and massaging his chest. PW10-Chinnsamy, has stated about the disbursement of money by the 1st accused.

(iii) PW11-Saravanan, the then Village Administrative Officer, Devathanapettai, has stated about the confession statement given by the accused 1 and 2.

(iv) PW12-Dr.Geethanjali, the Assistant Professor, Department of Forensic Medicine, Government Medical College, Villupuram, has stated about the details of postmortem and also about the opinion for the cause of death.

(v) PW13-Kaliyamoorthi and PW13-Jayavel, are the police officers, they have stated about the receipt of complaint, registration of the case, details of investigation and about the filing of the final report.

8. The learned trial Judge after recording the evidence on the side of the prosecution in respect to the incriminating materials adduced on the side of the prosecution, questioned the accused under Section 313 Cr.P.C. for which, both the accused



denied the evidence given by the prosecution witnesses. Both of them pleaded not guilty. However, they did not chose to examine any witnesses or mark any documents on their side.

9. Having considered all the materials placed before him and also on considering the arguments advanced by the learned counsel appearing on either side, the learned Principal District and Sessions Judge, Villupuram, acquitted both the accused, as stated supra.

10. Aggrieved by the order of acquittal, the appellant/de facto complainant is before this Court with the present appeal.

11. We heard Mr.S.Saravanakumar, learned counsel appearing for the appellant/de facto complainant and Mr.R.Muniyapparaj, learned Government Advocate (Crl. Side) appearing for the State/1st respondent and perused the materials available on record.

12. The learned counsel appearing for the appellant/de facto complainant would contend that though the evidence adduced on the side of the prosecution is sufficient to accept the guilt of the accused 1 and 2, the learned trial Judge without considering the same in a perspective manner, acquitted both the accused, which is erroneous one.

13. On considering the said submission with relevant records, it is apparent that before the trial Court, the witnesses examined on the side of the prosecution viz., PW1, PW2, PW6, PW7 and PW9, have clearly stated that during the relevant point of time, due to previous enmity, both the accused abused the deceased and consequentially assaulted him on his chest. Further, in their evidence they have stated that immediately after the assault made by the accused, the deceased fell down and died. The investigation officer also upon the faith over the statement given by the above witnesses, came to the positive conclusion that only due to the assault made by the accused, death would have happened to the deceased.

14. Now, in the said circumstances, the crucial area which is necessary to be looked into in this appeal is the evidence given by the Doctor, who conducted the postmortem. According to her, the death is not due to the assault made by the accused. In respect to the cause of death, she had opined that the deceased would have died due to the effects of coronary artery heart disease with i) presence of pre-existing coronary disease, ii) presence of alcohol in the viscera, iii) presence of multiple simple injuries over the surface of the body. Further, during the chief examination, she has specifically stated as follows:



“இறந்துபோன நபருக்கு இடது நெஞ்சில் ஏற்பட்ட கன்றிய காயத்தினால் ஒரு நபர் ஒங்கி கையால் குத்தும் போது வாய்ப்பு, எந்தா என்றால் நேரடியாக இறப்ப , ஏற்பட வாய்ப்பு, இல்லை ”

Therefore, in respect to the cause of death, the witnesses examined on the side of the prosecution has stated two set of evidence. The trial Court has also considered the contradictions available between the evidence of eyewitness and the expert evidence and had come to the conclusion that the accused 1 and 2, are not found guilty.

15. In this connection, it is relevant and necessary to see the judgment of our Hon'ble Apex Court, in Bannareddy and Others Vs. State of Karnataka and Others, reported in 2018 (5) SCC 790, wherein our Hon'ble Apex Court has held as follows:

“10.....It is well settled principle of law that the High Court should not interfere in the well reasoned order of the trial court which has been arrived at after proper appreciation of the evidence. The High Court should give due regard to the findings and the conclusions reached by the trial court unless strong and compelling reasons exist in the evidence itself which can dislodge the findings itself. This principle has further been elucidated in the case of Sambhaji Hindurao Desmukh and Ors. vs. State of Maharashtra, (2008) 11 SCC 186, para 13, wherein this Court observed that:

“.....The High Court will interfere in appeals against acquittals, only where the trial court makes wrong assumptions of material facts or fails to appreciate the evidence properly. If two views are reasonably possible from the evidence on record, one favouring the accused and one against the accused, the High Court is not expected to reverse the acquittal merely because it would have taken the view against the accused had it tried the case. The very fact that two views are possible makes it clear that the prosecution has not proved the guilt of the accused beyond reasonable doubt and consequently the accused is entitled to benefit of doubt.”

16. Further, in an appeal against acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him and the fundamental principle of criminal justice delivery system is that every person, accused of committing an offence shall be presumed to be innocent, unless his guilt is proved by a competent Court of law. Secondly, if the accused has secured an order of acquittal, the presumption of his innocence is reaffirmed and



strengthened by the trial Court. Even if two reasonable conclusions are possible on the basis of evidence on record, an appellate Court should not disturb the finding of the acquittal recorded by the trial Court.

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17. Therefore, having heard the learned counsel on either side and having gone through the material on record, apparently, we are of the firm opinion that prosecution has miserably failed to prove its case and thereby, order of acquittal passed by the Court below is well within the four corners of law. Hence, the appeal deserves to be dismissed.

18. In the result, the Criminal Appeal is dismissed and the impugned order of acquittal dated 01.03.2021 passed by the learned Principal District and Sessions Judge, Villupuram in S.C.No.87 of 2017, is hereby confirmed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1. The Principal District and Sessions Judge,
Villupuram.
2. The Public Prosecutor,
High Court, Madras.

Cr1.A No.326 of 2021

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HS(02/08/2021)