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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.07.2021

PRONOUNCED ON : 30.07.2021

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

CRL.A.No.80 of 2018

Kumar

...Appellant / P.W.2

Vs.

1.The Inspector of Police
Vanapuram Police Station
Tiruvannamalai District
(Crime No.05 of 2011)

...R1/Complainant

2.Prakash
3.Sankar
4.Gopi
5.Kandeepan
6.Govindan
7.Thoppaiyan

... R2 to R7/Accused

Criminal Appeal filed under Section 378 Cr.P.C. to set aside the judgment and order dated 31.10.2017 passed by the District and Sessions Judge, Tiruvannamalai in S.C.No.38 of 2012 and convict the accused/ respondents 2 to 7 herein.

For Appellant : Mr.L.Mahendran

For R1 : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor

For R2 to R7 : Mr.M.Krishnamoorthy

J U D G M E N T

This criminal appeal is directed against the judgment and order dated 31.10.2017 passed by the District and Sessions Judge, Tiruvannamalai in S.C.No.38 of 2012, acquitting the accused/respondents 2 to 7 herein.

2. The prosecution story runs thus :



2.1. The deceased Annamalai is the brother of Thoppaiyan (A6) and paternal uncle of Prakash (A1), Sankar (A2), Gopi (A3), Kandeepan (A4) and Govindan (A5).

2.2. The deceased and the accused hailed from Koodalur village and they were having land disputes between them for over three decades. It is said that a suit is pending in the Court of the District Munsif, Chengam, in connection with the land dispute.

2.3. While that being so, it is alleged that on 05.01.2011 around 05.00 p.m., A1 to A6 attacked the deceased and his sons in the disputed property, resulting in injuries to the deceased and his sons viz., Jayapaul (P.W.1), Kumar (P.W.2) and Rajamani (P.W.3). In the attack, the deceased lost his life and on the statement (Ex.P1) given by Jayapaul (P.W.1) while under treatment in the Government Hospital, Tiruvannamalai, Udayakumar (P.W.17), Sub-Inspector of Police, registered a case in Vanapuram P.S.Crime No.5/2011 on 05.01.2011 for the offences under Sections 147, 148, 294(b), 323, 324, 307 and 302 IPC against the aforesaid six named accused.

2.4. Investigation of the case was taken over by Murugesan (P.W.18), Inspector of Police, who went to the place of occurrence and prepared the observation mahazar (Ex.P19) and the rough sketch (Ex.P20). Inquest was conducted over the body of the deceased and the inquest report was marked as Ex.P21. After the inquest, the body was sent to the Government Hospital, Tiruvannamalai, where Dr.Kamalakaran (P.W.16) performed autopsy and issued the post-mortem certificate (Ex.P13), wherein, he has opined as follows :

"The deceased would appear to have died of shock (haemorrhagic) due to injuries sustained by him 16-24 hours prior to autopsy."

2.5. Prakash (A1), Gopi (A3), Kandeepan (A4), Govindan (A5) and Thoppaiyan (A6) were arrested on 06.01.2011 and Shankar (A2) was arrested on 15.02.2011 and several weapons allegedly used in the attack were recovered.

2.6. After examining witnesses and collecting the various reports, the Investigating Officer-Murugesan (P.W.18) completed the investigation and filed a final report before the jurisdictional Magistrate, who committed the case to the Court of Session, Tiruvannamalai in S.C.No.38 of 2012, for trial. The Court of Session, Tiruvannamalai framed charges for the offences under Sections 147, 148, 149, 294(b), 302, 307, 323 and 324 IPC for causing the death of Annamalai and for causing various injuries to the other witnesses.

2.7. When questioned, they pleaded "not guilty".



2.8. To prove the case, the prosecution examined 18 witnesses, marked 24 exhibits and 5 material objects. When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. From the side of the accused, no witness was examined.

2.9. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 31.10.2017, in S.C.No.38 of 2012, acquitted the accused of all the charges, aggrieved by which, Kumar (P.W.2), has preferred this appeal under the proviso to Section 372 Cr.P.C.

3. Heard Mr.L.Mahendran, learned counsel for the appellant; Mr.Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the 1st respondent State and Mr.M.Krishnamoorthy, learned counsel for the respondents 2 to 7/accused.

4. It is trite that while dealing with an appeal against acquittal, the Court should bear in mind that the accused enjoys a double presumption of innocence viz., the presumption of innocence during trial and a further presumption of innocence after his acquittal and therefore, the appellate Court should be slow in interfering with it (See V.Sejappa Vs. State [(2016)12 SCC 150]).

5. In this case, Jayapaul (P.W.1), son of the deceased and one of the injured witness on whose complaint, the FIR was registered, did not support the prosecution case and turned hostile. As regards Rajamani (P.W.3), another son of the deceased, he has stated that he was attacked by the accused elsewhere and that he has no direct knowledge about the attack on his father (deceased).

6. In the wound certificates of the injured witnesses viz., Kumar (P.W.2), Jayapaul (P.W.1) and Yasodha (P.W.4), Exs.P14, P15 and 16 respectively, it is stated that the injured were attacked by 30 persons with shovel and wooden logs. The one and only witness, who has supported the prosecution case with regard to the actual attack was Kumar, who was examined as P.W.2. The trial Court has disbelieved the testimony of Kumar (P.W.2), on the ground that he had stated that he was not present in the place of occurrence, when the police came and that the police had also not showed him the weapons.

7. The trial Court has had the opportunity to see the demeanour of the witnesses for appreciating their evidence. It is seen that all the other close relatives viz., Meena (P.W.6), W/o.Kumar (P.W.1) and Revathy (P.W.7), had turned hostile.



8. In such view of the matter, it will be unsafe to interfere with the acquittal of the accused, based on the shaky testimony of Kumar (P.W.2). It is a settled proposition of law that when two views are possible from the evidence on record, the view that favours the accused merits acceptance (See Arulvelu and another Vs. State [(2009) 10 SCC 206]).

In the result, we find no merits in this appeal and accordingly, this criminal appeal is dismissed.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

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To

1.The District and Sessions Judge
Tiruvannamalai

2.The Inspector of Police
Vanapuram Police Station
Tiruvannamalai District

3.The Public Prosecutor
High Court, Madras

+2ccs to M/s.M.Krishnamoorthy, Advocate SR.No.36982

+1cc to M/s.L.Mahendran, Advocate SR.No.37547

CRL.A.No.80 of 2018

JP-II(CO)
RVM(26/08/2021)