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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.09.2021

DELIVERED ON : 17.09.2021

CORAM :

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CrI.A.No.214 of 2017

M.Gandhimathi

...Appellant/PW-6

Vs.

State by

1. The The Inspector of Police (Law & Order)

K9 Thiru.Vi.Ka Nagar Police Station,

Chennai - 11

...1st Respondent/Complainant

2. Gouthaman

3. Senthil Kumar

4. Ravi @ Ravindranath

5. Raghu @ Ragunath

6. Ramesh @ Dandabani

7. Karthi @ Karthikeyan

8. Arulraj

9. Purushothaman ...Respondents (2 to 9) / Accused (1 to 8)

PRAYER: Criminal Appeal filed under Section 372 of Criminal Procedure Code, 1973 to set aside the Judgment of acquittal dated 04.01.2017 of the learned XVII Additional Sessions Judge (I/C), Chennai, passed in S.C.No.95 of 2012, and punish the accused in accordance with law.

For Appellant : Mr. N.R. Elango, Senior Counsel
for Mr. D. Muthukumar

For R1 : Mr. M.Babu Muthu Meeran, APP

R2 to R5 & R9 : Mr. G. Prabhakaran

R6 to R8 : Mr. R.C. Paul Kanagaraj

J U D G M E N T

Judgment of the Court was delivered by R.HEMALATHA, J.

This appeal is filed by Gandhimathi (P.W.6), sister of the deceased victim, against the acquittal of the accused (1) Gouthaman, (2) Senthil Kumar, (3) Ravi @ Ravindranath, (4) Raghu



@ Raghunath, (5) Ramesh @ Dandabani, (6) Karthi @ Karthikeyan, (7) Arulraj, (8) Purushothaman, by the learned XVIII Additional Sessions Judge, in charge of XVII Additional Sessions Judge, Chennai, for the offences punishable under Sections 147, 148, 341, 302 r/w 149 of I.P.C, vide its judgment dated 04.01.2017. Leave was granted by this Court vide order dated 22.03.2017 in CMP No.5842 of 2017.

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

One Sivakumar and Srinivasan were partners in SSS Sat System, Thiru.Vi.Ka Nagar, Gopalapuram, Chennai and they serviced more than 850 Cable TV connections in and around the area. One Sridhar, who was appointed as a collection agent, allegedly misappropriated the funds of SSS Sat System and therefore, one of the partners Sivakumar wanted to sell off the said Cable TV business. Both the first accused (Gouthaman) and the deceased Punkraj @ VijayaKumar were interested in taking over the business. On 09.10.2009 at about 9.30 A.M. the deceased Punkraj @ Vijayakumar along with his friends, Armstrong John (P.W.1), Rajesh (P.W.2), Srinivasan (P.W.3), Prabhu and Appan came over to SSS Sat System at Gopalapuram and the deceased tried to open the lock of the premises. On seeing this, Purusothaman (A8) told the deceased not to open the lock and also called his son Gouthaman (A1) over his mobile phone and asked him to rush to the Cable TV office at Thiru.Vi.Ka. Nagar, Gopalapuram. Accordingly, Gouthaman (A1), Senthil Kumar (A2), Ravi @ Ravindharanath (A3), Raghu @ Ragunath (A4), Ramesh @ Dandabani (A5), Karthi @ Karthikeyan (A6) and Arul Raj (A7) came over there in a Toyota Qualis White car bearing Registration No. TN07 AZ 3466 and threatened the deceased Punkraj to leave the place immediately. As the deceased refused to leave the place and also informed the accused 1 to 7 that he had entered into an agreement of sale with Sivakumar, Gouthaman (A1) stabbed the deceased with a knife on his neck. Since the deceased Punkraj attempted to escape, Arul Raj (A7) pushed him down and all the accused attacked him and also stabbed him with knives, as a result of which, the deceased fell unconscious. The accused 1 to 8 also threatened the others, who were present there, with dire consequences. After the attack, the accused left the place in their Toyota Qualis Car and the victim was lying in a pool of blood. The P.W.1 informed the police and the deceased was taken to Stanley Hospital by the police, where he was declared as brought dead. His body was, thereafter, sent for postmortem to the Kilpauk Medical College Hospital. In the meanwhile, P.W.1 went to K9 Thiru.Vi.Ka. Nagar Police Station and lodged a complaint (Ex.P1) with the Inspector of Police at about 10.00 hours on the same day. Thiru. T. Prakash (P.W.29), the Inspector of Police, Thiru.Vi.Ka. Nagar Police Station, registered an F.I.R based on the complaint Ex.P1 given by the P.W.1 in Crime No.749 of 2009 against 'A1 and others' for an



offence punishable under Section 302 of I.P.C and took up the investigation. He went to the scene of offence and prepared a rough sketch (Ex.P19) and an observation Mahazar (Ex.P20) and also recovered a ball point pen with strands of grey hair (M.O.2), an iron bar measuring 21 cm length and 9.5 cm breadth (M.O.3) and one pair of chappals (M.O.4) under a cover of a mahazar Ex.P21 in the presence of witnesses Raghu and Dinakaran (P.W.11). Thereafter, he went to the mortuary of Kilpauk Medical College Hospital and conducted an inquest (Ex.P22) on the body of the deceased Punkraj @ Vijayakumar. After recording the statements of the P.W.1, P.W.2 and one Appan, P.W.29 arrested the accused 1,2 and 7 on 10.10.2009 near Perambur Loco shed Railway Station and recorded their confession statements (admissible portions of which were marked as Ex.P24 and Ex.P25). Based on their confessions, P.W.29, recovered two knives measuring 64 cm and 42 cm (M.O.11 and M.O.12 respectively) in the presence of the witnesses Anthoniraj and Stalin in front of a shop bearing door No.3A, Thiru.Vi.Ka. Nagar, Gopalapuram on 15.10.2009. P.W.29 arrested A5 and A6 and recorded their confession statements (admissible portions of which were marked as Ex.P28 and Ex.P30). Based on their confession, a knife measuring 44 cm (M.O.14) was recovered from Kumaran Nagar Bus stand. P.W.29 also seized the Toyota Qualis Car bearing Registration No.TN07 AZ 3466 used in the commission of the crime. The other accused, except A8, surrendered before the Judicial Magistrate, Tambaram, and the P.W.29 took A1, A3 and A4 under police custody. On the basis of the confession statement of A3, a knife measuring 42.5 cm (M.O.15) was recovered from a vacant plot in Kumaran Nagar and another knife measuring 43 cm (M.O.16) was also recovered based on the confession of Raghu (A4).

3. Dr.Vikram who conducted autopsy on the body of the deceased found various cut injuries and mentioned the same in his report Ex.P2. In the opinion of the doctor, the deceased died of shock and hemorrhage as a result of multiple cut injuries. After completing the investigation, P.W.29 laid a final report before the learned Judicial Magistrate against all the accused for the offences punishable under Sections 147, 148, 341, 302 r/w 149 of I.P.C.

4. In order to establish the guilt of the accused, the prosecution examined 30 witnesses, out of which P.W.3, P.W.4, P.W.7 to P.W.9, P.W.11, P.W.13 to P.W.15, P.W.17, P.W.18, P.W.20 to P.W.23 and P.W.28 turned hostile to the prosecution. The learned Sessions Judge, after analysing the entire evidence on record, found the accused 1 to 8 not guilty of the offences of which they were charged and acquitted them on the following grounds:



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- 1) The chief examination of P.W.1 about the description of weapons did not match with the weapons seized by the police.
- 2) P.W.1, in his cross examination deposed that he did not prepare the police complaint (Ex.P1) and that he only narrated the sequence of events to the police.
- 3) P.W.1 also admitted that he did not know the names of the accused except Gouthaman (A1) and that the police complaint (Ex.P1) was not lodged at 10.30 a.m as mentioned in the FIR, as he left Kilpauk Medical College Hospital only at 1.00 P.M on 09.10.2009.
- 4) The Inquest report (Ex.P22) did not contain the Crime number and the gist of the FIR.
- 5) P.W.19 has deposed that he received the message regarding the occurrence of the crime before 9 a.m. whereas the F.I.R and the complaint mentioned it as 9.30 a.m.
- 6) P.W.19 also took the body for postmortem only at 4.30 p.m. as per the inquest report Ex.P22 though the information regarding the incident was received by him even before 9 a.m.
- 7) P.W.5 neither knew the accused nor the size of the weapons used in the murder.
- 8) P.W.6 deposed that she knew only three of the accused and since she is the sister of the deceased, her evidence is considered as that of an interested witness.
- 9) 164 Cr.P.C statements of P.W1 to P.W.3 and one Prabhu were recorded on 08.01.2010 i.e. after 3 months after the occurrence of the crime.

5. As earlier mentioned, the sister (PW6) of the deceased filed the appeal against the acquittal. Mr. N.R. Elango, learned Senior counsel assisted by Mr. D. Muthu Kumar appearing for the appellant (P.W.6) contended that all the observations of the Sessions Judge are perverse. He also contended that the appellant herself being a direct eye witness, due weightage was not given to her deposition and also her husband's deposition (P.W.5).

6. On a careful perusal of the records placed before this Court it is evident that it is a case of brutal murder in broad day light and the deceased bore fatal cut injuries all over his body. The prosecution has tried to make out the case on the premise of business rivalry between the accused 1 to 8 on the one hand and the deceased on the other. In fact, the prime witnesses viz., PW1 and PW2 have given a version that the



deceased was murdered brutally by the accused in front of the shop SSS Sat System which the deceased claimed to have bought from one Sivakumar just a day before the occurrence of the crime. It is also stated by the prosecution that P.W.5 and P.W.6 who are the brother-in-law and sister of the victim respectively, were invited for the inauguration of the new business by the deceased and were present during the occurrence of the crime. Strangely, the presence of neither P.W.5 nor P.W.6 find a place in the police complaint (Ex.P1) given by P.W.1. Moreover, P.W.1 on his part has categorically stated in his cross examination that he never went to the police station to file the police complaint at 10.30 a.m. on 09-10-2009 and that the sequence of events were narrated by him for making the complaint (Ex.P1). P.W.29 has also not examined the person who wrote the complaint on behalf of P.W.1. It is not the case of the prosecution that P.W.1 is an illiterate.

7. P.W.2 who also claims to have been present during the incident has not even bothered to accompany the body to the hospital or go to the police station to give a complaint. In fact, his deposition abruptly ends with his statement that he left for his home after the body was taken to the hospital. P.W.1, in his complaint, had mentioned only the name of the first accused, which clearly shows that he was not aware of the other accused. He has also not mentioned about the presence of P.W.5 and P.W.6 in his complaint Ex.P1, though in his deposition he has stated that P.W.6 would have got injured in the melee but for his timely intervention of pulling her back. This statement appears to be an after thought in order to strengthen the case of the prosecution by bringing in close relatives of the deceased in the scene of crime. The identification parade, which is an integral part of any investigation, was not done for reasons best known to the police. The sniffer dogs were brought in as per the version of P.W.29. In such a scenario, the learned counsel for the respondents/accused had questioned as to why such a step was taken when the culprits were already known to the prosecution and were the real culprits.

8. Ex.D1 is a copy of a petition filed by Jeevan, own brother of the deceased before this Court in CrI.O.P. No.28319/08, wherein, the brother has made a passionate appeal for the investigation of the case to be transferred to CBCID as the police has arranged fake accused persons, especially, Senthil (A2) and Arulraj (A7) who were remanded to judicial custody. The extracts of his petition in Ex.D1 is reproduced below for further clarity.

"The petitioner further submit that after registering the FIR, the 2nd respondent had discussed with one Sundarajan who is employed in Canara bank in Ayanavaram branch and asked to arrange the fake



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accused persons in order to remand in this case. Accordingly, one Senthil, Arul raj were produced before the investigation officer and they were remanded to judicial custody. But the 2nd respondent shown in their record that they were arrested near Red Hills.....

.....The petitioner further submits that one QUALIS CAR BEARING REG. NO. TN 07AZ 3466 which was used by the accused to went the occurrence place, after committing all the accused returned in the same vehicle. The investigating officer seized the vehicle during the course of investigation but he has not taken any steps to find out the owner of the vehicle because the said vehicle belongs to one Venkadesan who is the very close friend of the Deputy Commissioner of Police of the jurisdiction.....

.....The petitioner further submits that the petitioner approached the 2nd respondent on several occasion and requested to do the proper investigation and handed over cell phone which was used by the accused at the time of occurrence and requested the investigating officer to find out how many person were contacted with the accused earlier regarding the dispute in respect of the cable TV. But, the 2nd respondent the investigation officer deliberately avoided to take steps to the particulars regarding the conversation within deceased and the accused."

9. This petition was filed on 21.10.2009 by which time all the accused, except A8, were arrested and remanded to judicial custody. The deposition of D.W.1 that it was an attack by gangsters who came in motorcycles cannot also be brushed aside. Apart from this, the bank employee, who was examined as D.W.3 on the side of the accused, had deposed that he went to the police station with A1, A2 and A7 at about 12.00 mid night on 09.10.2009 and that the police detained them in the police station for enquiry. This version of D.W.3 matches with the contents of the petition Ex.D1 filed by the brother of the deceased seeking CBCID investigation in his brother's murder case suspecting foul play by the local police. It is also pertinent to mention that A1 was the one treated for fracture of his finger on 10.10.2009 at 10 p.m. for which evidence has been adduced by the prosecution. Even assuming that A1 is involved in the killing and that he got injured in the deadly assault on the victim, his treatment in the hospital for a fracture in his finger is only on the next day, i.e., 10.10.2009, that too in the night. If the prosecution tries to prove that A1 got injured in the brutal assault he made on the victim on 9th morning, the obvious question arises why and how he managed with



a finger fracture for 36 hours. Interestingly, he was arrested even before getting treated for his fractured finger.

10. According to the prosecution, the motive behind the murder is that there was a business rivalry between A1 and the deceased with regard to purchase of SSS Sat System. But in the Inquest report Ex.P22 it is stated that there was previous enmity between one Sridhar (Collection agent working under erstwhile owners of the SSS Sat System, Sivakumar and Srinivasan) and the accused A1. P.W.29 also admitted this during the course of cross examination. FIR is also silent on the aspect of motive. P.W.29 further admitted that there was a strained relationship between Sridhar and A1. Srinivasan (P.W.10), who is one of the partners of SSS Sat System turned hostile to the prosecution. As per the evidence of P.W.10, the deceased had lodged a complaint against Sridhar a day prior to the occurrence. P.W.29's evidence is that he could not examine Sridhar as he absconded immediately after the occurrence. Thus, motive is not proved in the instant case. It is true that the prosecution is not bound to prove motive of any offence in a criminal case, in as much as motive is known only to the perpetrator of the crime and may not be known to others. In the instant case, the prosecution tried to make out a case against the accused on the premise of business rivalry between the accused and the deceased. This theory of the prosecution totally fails. The learned Trial judge might have missed in mentioning many of these aspects while reasoning for the acquittal but his assessment has been correct and he had the advantage of seeing the witnesses in person and hearing their depositions to evaluate their credibility. It is also the conclusion of the learned trial judge that the key witnesses also could not identify the weapons. They were exposed when cross examined in the trial itself.

11. Ex.P.22, the inquest report, has many shocking revelations which weakens the prosecution case totally.

- a) It is stated that P.W.1 was the one who saw the deceased alive last at 9.15 a.m at Thiru.Vi.Ka Nagar bus stand.
- b) It is also stated that the deceased's body was found by P.W.1 in front of the SSS Sat System Office at 9.30 a.m. and that he reported to K9 Police Station at 10.a.m.
- c) However in the same report it is mentioned that the deceased body was found opposite a tea stall on the same road.

These are totally in contradiction to P.W.1's deposition and 164 Cr.PC statements. Whether P.W.1 was present in the scene of crime and whether he was really an eye witness is a million



dollar question. It is also intriguing that Ex D-4 which is the challan issued by the IO (PW 29) for taking the body for post-mortem, mentions the body as that of an unnamed male found near Gopalapuram area. The time is mentioned as 4.30 pm by which time the FIR was prepared and already sent to Court, according to the prosecution. Ex.D-4 also does not also contain the crime number.

12. In Chandrappa v. State of Karnataka (2007) 4 SCC 415, the Apex Court held the legal position in appeal against acquittal as under: (SCC page 432 para 42).

"(1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no 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 emphasize 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 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."

13. The instant case is that of a gruesome murder. The lethal attack with weapons by a group of people on the hapless victim is unfortunate. However, we cannot be oblivious of the



fact that we are dealing with an appeal against the order of an acquittal. Unless we come to a conclusion that the impugned judgment and order is perverse and that the appreciation of evidence is faulty and that there is a patent illegality attached to the impugned judgment and order, we cannot upset the judgment and order of acquittal. None of these is found in this case.

14. The prosecution has tried to build a house with a pack of cards and that too, in a haste. That the house built with a pack of cards crumbled in the trial court is an under statement. In our opinion, it is a serious lapse on the part of the prosecution. The IO has shown laxity in investigation and it is crystal clear. Starting from the complaint, the infirmities and lapses are conspicuous. The Toyoto Qualis Car allegedly used in the crime was reportedly seized. Not a word is whispered about the inspection of the vehicle. It is not even marked as a material object (MO). The weapons used were not even described as blood stained in the mahazars and obviously the forensic report claimed that the marking of blood samples as inconclusive. It appears that the victim was stabbed many times all along the stretch of road when he tried to escape and neither the earth from the place opposite SSS Sat System office nor the place where he collapsed and fell down on the road (opposite the tea stall) was even attempted to be collected for blood stain analysis. P.W.1 and P.W.2 depositions have inconsistencies and they could not withstand the testimony of cross examination. P.W.5 and P.W.6 appear to have been 'planted' as alleged by the counsel for the respondents/accused. It is also important to note that 162 Cr.PC statements of P.W.5 and P.W.6 were sent to the concerned Judicial Magistrate only on 26.02.2010, i.e., after a lapse of 4 months. None of the witnesses knew the accused. As already observed, no identification parade was conducted by the police. The last nail in the coffin of the prosecution's theory was the affidavit filed by the brother of the victim who demanded a CBCID enquiry. P.W.6, who is the sister of the deceased, is not only missing in the scene of crime but also in the hospital. P.W.2 is a 'true friend' of the victim that he came home directly after witnessing the gruesome murder of the victim, his friend.

15. The allegation of the brother of the deceased victim in Ex.D1 cannot be brushed aside lightly. They seem to carry a lot of truth which has helped the accused to wriggle out of the offence.

16. It is our misfortune that the entire society is watching such crimes as a silent spectator. Such crimes are on the rise. Killing in broad day light by a group of armed men with many innocent people watching it but not helping the prosecution is



the bitter truth. It is not only because of their fear but also due to the extraneous factors. The entire responsibility to establish the guilt in such cases falls on the police and if the police is negligent, the courts are helpless. Culprits must be aware that the vision of law is powerful and the blade of a weapon in the hands of the court is sharper than the culprits. It definitely protects the innocents and punishes the culprits. Ironically, it is learnt that the victim himself had a number of criminal cases of serious nature against him.

17. To sum it up, the investigation has been shabby and slipshod with no serious efforts to nab the real culprits. We do not find any infirmity in the trial court judgment. The reasoning of the trial court does not smack of any perversity and due to the aforesaid reasons we find no reason to interfere with the verdict of the trial court.

18. In the result,

- 1) the Criminal Appeal is dismissed.
- 2) the judgment of the learned XVIII Additional Sessions Judge, in charge of XVII Additional Sessions Judge, Chennai, is confirmed.

Sd/-

Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

bga

To

1. The The Inspector of Police (Law & Order)
K9 Thiru.Vi.Ka Nagar Police Station, Chennai - 11
2. The XVIII Additional Sessions Judge, in charge of XVII
Additional Sessions Judge, Chennai.
3. The Chief Metropolitan Magistrate, Egmore, Chennai.
4. The V Metropolitan Magistrate,
Egmore, Chennai.
5. The Public Prosecutor,
High Court, Madras 104.



6. The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to M/s.D.Muthu Kumar Advocate, S.R.No.48056 (21/06/2022)

Crl.A.No.214 of 2017

SJ(CO)
LS(23/09/2021)
SB(21/06/2022)