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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2021

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH  
and

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.A.No.415 of 2017

Selvi,  
W/o.Late.Govindaraju

...Appellant /  
De facto complainant

versus

1.State represented by  
Inspector of Police,  
Vadaponparappai Police Station.  
(Crime No.277 of 2012)

...Respondent /  
Complainant

2.Chakkravarthi  
3.Selvam @ Selvaraj  
4.Subramanian  
5.Dhananchezhiyan  
6.Muneeswaran  
7.Sekar  
8.Saravanan  
9.Kamaraj @ Annadurai

...Respondents /  
A-1 to A-8

Criminal Appeal filed under Section 372 of the Code of Criminal Procedure, to call for the records and set aside the judgment of acquittal made in S.C.No.240 of 2015 dated 07.02.2017 passed by the learned I Additional District and Sessions Judge, Tindivanam and allow the appeal by convicting the accused for the charges framed against them.

For Appellant : Mr.Swami Subramanian

For Respondent No.1 : Mr.R.Muniyapparaj  
Government Advocate [Crl. Side]

For Respondent Nos.2 to 9: No Appearance



J U D G M E N T  
[Judgment of the Court was made by P.N.PRAKASH, J.]

This Criminal Appeal has been preferred against the judgment and order of acquittal dated 07.02.2017 passed by the learned I Additional District and Sessions Judge, Tindivanam in S.C.No.240 of 2015.

2. The prosecution story runs as under;

2.1 The accused had animosity against the deceased, which arose in the election to the local body. That apart, it is alleged that Subramanian/A3, the brother-in-law of the deceased was not happy with the deceased as he did not get his due share from the ancestral property of his wife, who is none other than the sister of the deceased. On these motives, it is alleged that on 07.06.2012, Subramanian/A3 called the deceased over phone and took him in his motorbike towards a nearby lake, where all the other accused arrived and belaboured the deceased with deadly weapons, resulting in his death.

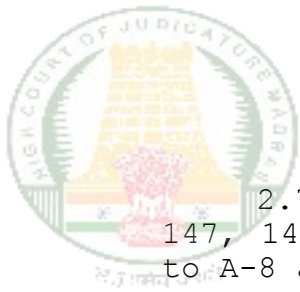
2.2 On a complaint given by Selvi (P.W.1), wife of the deceased, the Police, registered a case in Vadaponparappai P.S. Crime No.277 of 2012 under Sections 147, 148, 341, 120-B and 302 IPC on 08.06.2012 at 07.00 hours and took up investigation. The Investigating Officer went to the place of occurrence and prepared an Observation Mahazar (Ex.P.2) and a Rough Sketch (Ex.P.29).

2.3 Inquest was conducted over the body of the deceased and the body was sent to the Government Hospital for postmortem where Dr.Jeeva (P.W.13) conducted postmortem and issued Postmortem Certificate (Ex.P.15) wherein he has stated that the deceased died on account of injuries sustained by him.

2.4 The accused were arrested on various dates and their confession statements were recorded by the Investigating Officer.

2.5 After examining the witnesses and collecting various reports, the Investigating Officer filed a final report before the jurisdictional Magistrate for the offences under Sections 147, 148, 341, 120-B and 302 IPC, against Chakkravarthi/A1, Selvam @ Selvaraj/A2, Subramanian/A3, Dhananchezhiyan/A4, Muneeswaran/A5, Sekar/A6, Saravanan/A7 and Kamaraj @ Annadurai/A8, who are the respondents 2 to 9 herein.

2.6 On appearance of the accused, copies of the relied upon documents under Section 207 Cr.P.C. were furnished to them and the case was committed to the Court of Session in S.C.No.240 of 2015 for trial.



2.7 The trial Court framed charges under Sections 120-B, 147, 148 and 302 r/w 149 IPC against the respondents 2 to 9/A-1 to A-8 and when they were questioned, they pleaded 'not guilty'.

2.8 To prove the charges, the prosecution examined 19 witnesses and marked 40 exhibits and 12 material objects. When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same.

2.9 On the side of the defence, an alteration report dated 08.06.2012 was marked as Ex.D.1 in the cross-examination of the Investigating Officer. No witness was examined on behalf of the appellant.

2.10 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 07.02.2017 in S.C.No.240 of 2015, acquitted all the accused, aggrieved by which, the wife of the deceased, Selvi (P.W.1) has filed the present appeal.

3 Heard Mr.Swami Subramanian, learned counsel appearing for the appellant and Mr.R.Muniyapparaj, learned Government Advocate (Crl. Side) appearing for the first respondent/State.

4 Since there is no appearance on behalf of the respondents 2 to 9/accused, we appointed Mr.B.Thirumalai, Advocate (Enrol.No. 2860/2006) to represent the accused.

5 Mr.Swami Subramanian, learned counsel for the appellant contended that Selvi (P.W.1) and Prabakaran (P.W.7) have given clinching evidence as they have clearly stated that they saw the accused belabouring the deceased, which is not properly appreciated by the trial Court. It is also submitted that the trial Court had failed to appreciate the evidence of Sathiyamoorthy (P.W.2) and Balaraman (P.W.3).

6 Rebutting the submissions, Mr.BThirumalai, learned counsel for the respondents 2 to 9 / accused submitted that the trial Court has given cogent reasons for disbelieving the evidence of Selvi (P.W.1), Sathiyamoorthy (P.W.2), Balaraman (P.W.3) and Prabakaran (P.W.7) inasmuch as they are relatives of the deceased. He further submitted that Prabakaran (P.W.7), in his evidence, has clearly stated that he was in the house of Selvi (P.W.1) along with other witnesses and only at that time, they received information that Govindaraj has been murdered, on hearing which, they rushed in the night around 11 p.m. with hurricane lantern to the place of occurrence. He also contended that the F.I.R. in this case has been registered with an



inordinate delay and the same has reached the jurisdictional Magistrate only at 04.20 p.m. On 08.06.2012.

7 We have given our anxious consideration to the rival submissions and have perused the evidences of the aforesaid witnesses and we find that the deceased Govindaraj was involved in 10 criminal cases and that, he was also convicted by the Sessions Court in some cases and was on bail.

8 It is the specific defence of the accused that the deceased Govindaraj used to do Katta Panchayat and thereby, earned the enmity of so many others; since the police were not able to secure the real assailants, Chakravarthy (A-1) has been implicated on the short ground that he contested the election against Govindaraj, which had developed animosity.

9 Admittedly, Chakravarthy (A-1) had won the election against Govindaraj and therefore, it is only Govindaraj, who must have had animosity against him for one reason or the other. We find that the evidences of Selvi (P.W.1), Sathiyamoorthy (P.W.2), Balaraman (P.W.3) and Prabakaran (P.W.7), who are close relatives of the deceased, are to the effect that they went in the night hours behind the deceased and watched the attack from behind a bush at the place of occurrence. These evidences have been rightly disbelieved by the trial Court in the light of the clear evidence of Prabakaran (P.W.7) and Aladiyan (P.W.9), who have stated otherwise.

10 It is trite that in an appeal against acquittal, when there are two views possible, the appellate Court should be slow in disturbing the judgment and order of acquittal and it can interfere only when there is a gross miscarriage of justice. Such parameters do not obtain in this case warranting our interference.

In the result, this Criminal Appeal is dismissed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The I Additional District and Sessions Judge,  
Tindivanam.

2.The Inspector of Police,  
Vadaponparappai Police Station.

3.The Public Prosecutor,  
High Court, Madras.

+1 CC to Mr.B.Thirumalai, Advocate sr 29279.

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RLD(CO)  
SP(27/07/2021)