



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:29.09.2021
CORAM
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRL.A (MD)No.90 of 2018

Annapoorani

.. Appellant/P.W.1

-vs-

1.The State rep. by
The Inspector of Police,
Thiruvegamputhur Police Station,
Sivagangai District.

2.Muthukumar

3.Kabilan alias Muthukumar

4.Songai alias Thangaiah

.. Respondents

Criminal Appeal filed under Section 397 of the Code of Criminal Procedure against the judgment of the Sessions Judge, Sivagangai in S.C.No.7 of 2006 dated 24.09.2007.

For Appellant : Mr.P.Karthick
for Mr.T.Balakrishnan

For Respondent : Mr.A.Thiruvadikumar,
Additional Public Prosecutor
For R1

RR2 to 4 : No Appearance

JUDGMENT

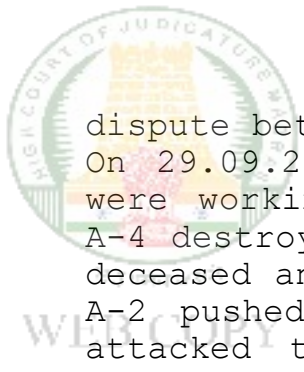
(Judgment of the Court was delivered by V.BHARATHIDASAN, J.)

Originally there are four accused in this case, and A-3 was absconding, hence, the case was split up and the remaining three accused faced the trial. The trial Court acquitted all the accused. Now, challenging the acquittal order of the Sessions Judge, Sivagangai in S.C.No.7 of 2006 dated 24.09.2007, the complainant/P.W.1, is before this Court with this Criminal Appeal.

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

The deceased one Kalyani is the sister of the appellant/P.W.1.

All the accused are neighbouring land owners, there was a civil



dispute between the parties regarding using of common water channel. On 29.09.2004, at about 2.00 p.m., while the deceased and P.W.1, were working in the field, the absconding accused A-3 along with A-4 destroyed the water channel. When the same was questioned by the deceased and P.W.1, A-1 pushed P.W.1 and kicked her in the chest, A-2 pushed the deceased and kicked her in the chest, then, A-1 attacked the deceased with weeding hook and the deceased fell unconscious, at that time, P.W.3 son of the deceased, P.W.4 son of P.W.1, came to the scene of occurrence, after seeing them, all the accused ran away. Then, P.W.1 and P.W.4, went to the police station and lodged the complaint.

3. P.W.10, the Sub-Inspector of Police working in the respondent police station on receipt of the complaint, treated the said complaint as C.S.R.No.91 of 2004, and sent both the deceased and P.W.1 to the hospital for treatment. On the next day, on 30.09.2004, at about 6.30 p.m., P.W.10, registered the F.I.R(Ex.P.8) for the offence under Sections 341, 323, 506(i) I.P.C and sent the same to the Judicial Magistrate Court on 02.10.2004, after two days. In the mean time, both the injured P.W.1 and the deceased were admitted in Government Hospital, Devakottai, by P.W.2, Doctor, and issued Accident Register Ex.P.2, for the deceased and Ex.P4 for P.W.1. Thereafter, P.W.12, Inspector of Police, working in the respondent police station, commenced the investigation and rushed to the hospital where he recorded the statement of P.W.1, and also recorded the statement of Doctor(Ex.P.3); who referred the deceased to the Government Hospital, Madurai. Considering the seriousness of the injury sustained by the deceased, P.W.12, altered the F.I.R (Ex.P15), for the offence under Sections 341, 307 and 34 of I.P.C. Then, he proceeded to the scene of occurrence where he prepared the Observation Mahazar(Ex.P9), Rough Sketch(Ex.P10) and also recorded the statement of witnesses. On 04.10.2004, he arrested A-1 and on such arrest, he voluntarily came forward to give a confession. Based on the admissible portion of the confession, he recovered a Weeding Hook(M.O.1) and sent him for remand to judicial custody. Subsequently, on 09.10.2004 at 9.30 hours, the deceased succumbed to the injuries. Hence, he altered the F.I.R for the offence under Sections 341, 302 and 34 I.P.C and conducted the inquest and sent the dead body for postmortem autopsy.

4. P.W.11, a Doctor working in the Government Medical College Hospital, Madurai, conducted the postmortem autopsy and gave a report Ex.P.14 and found the following injuries:

"The following antemortem injuries are noted on the body:

1. Bluish contusion noted on the right temporo parietal are 6cm X 3 cm

On dissection: Scalp, Skull and Dura:

<https://hcservices.ecourts.gov.in/hcservices/>



An oblique subscalpal contusion on the right temporo parietal area 8 cm X 4 cm and bluish in colour. Right temporalis muscle bruised. Fracture vault of the skull involving the right parieto temporal bone 8 cm obliquely. Extra dural haematoma right temporal lobe 6 cm X 5 cm X 1 cm. Laceration of brain right temporal lobe 6 cm X 5 cm X 0.5 cm. Diffuse sub dural and sub arachnoid haemorrhage noted over both cerebral hemispheres. Cerebro spinal fluid increased involum and blood stained.

Other Findings:

Peritoneal and pleural cavities - empty. Pericardium contains 15 ml. of straw colour fluid. heart - right side fluid blood. left side - empty. coronary - patent. Larynx and traches - normal. Hyoid bone - intact. Lungs, liver, spleen and kidneys - cut section congested. Stomach - contains 100 ml of brown colour fluid. Nil specific smell. Mucosa - normal. Small intestine - contains 20 ml of bile stained fluid. Nil Specific smell. Mucosa - normal. Bladder - empty. Uterus - normal cut section - empty. Brain - described in injury column.

He was of the opinion that the deceased would appear to have died of cranio cerebral injuries. Thereafter, P.W.12 arrested all other accused and after recording the statement of witnesses and on completion of investigation, he filed the final report.

5.Considering the above materials, the trial Court framed charges and the accused denied the same as false. In order to prove its case, the prosecution examined as many as 12 witnesses, marked 19 documents and also produced one material object.

6. Out of the witnesses examined, P.W.1, is the injured eyewitness and she is the sister of the deceased. P.W.2 is the Doctor, who admitted both the deceased and P.W.1 at Government Hospital, Devakottai. P.W.3, is the son of the deceased, said to be an eyewitness to the occurrence. P.W.4 is the son of P.W.1, he also said to be an eyewitness to the occurrence. He along with P.W.1, went to the police station and lodged the complaint. P.W.5 is the witness to the observation mahazar, he turned hostile.

7.P.W.6, is a Village Menial, he is the witness to the arrest of A-1 and recovery of M.O.1. P.W.7, is a Head Constable, who submitted the F.I.R to the Judicial Magistrate Court. P.W.8 a Head Constable, identified the dead body to the postmortem Doctor. P.W.9, is the Doctor, who admitted the deceased in the Government Medical College Hospital, Madurai.



8.P.W.10, the Sub-Inspector of Police working in the respondent police station, registered the F.I.R. P.W.11, Doctor working in the Government Medical College Hospital, Madurai, conducted the postmortem autopsy on the dead body and gave a report. P.W.12 is Inspector of Police, conducted investigation, on completion of investigation, filed the final report.

9. The above incriminating materials were put to the accused under Section 313 Cr.P.C., and the accused denied the same as false. Having considered the materials, available on record, the trial Court acquitted all the accused. Challenging the order of acquittal, P.W.1, is before this Court with this Criminal Appeal.

10. The learned counsel appearing for the appellant would submit that there are four eyewitnesses to the occurrence and all the eyewitnesses have clearly stated that, all the four accused were present in the scene of occurrence and A-1 pushed P.W.1 and kicked her in the chest & A-2 pushed the deceased and kicked her in the chest and then, A-1 attacked the deceased with weeding hook and caused injuries. Even at the time of admission, both P.W.1 and P.W.4, have clearly stated before the Doctor that four known persons attacked them. However, pointing out some minor inconsistency in the evidence, the trial Court has acquitted all the accused.

11. The learned counsel for the appellant would further submit that the medical evidence also clearly corroborate the evidence of eyewitnesses. Further, there is no delay in filing the F.I.R., even in the F.I.R, the name of all the four accused were found place. Without considering those circumstances and without considering the evidence of the eyewitnesses in proper perspective, the trial Court has given an erroneous finding that there is material inconsistency in their evidence, which is perverse. Hence, the judgment of the trial Court is liable to be set aside.

12. We have considered the submissions of the learned counsel appearing for the appellant and the learned Additional Public Prosecutor also and perused the records carefully.

13. The trial Court acquitted all the accused on the ground that, in the original complaint filed by P.W.1, she has not stated anything about the over act of A-1, and there is material contradiction in the evidence of P.W.1, and the injuries sustained by P.W.1 is also doubtful. Even in the earlier complaint Ex.P1, there is no whisper about the presence of P.Ws.3 and 4 in the occurrence place and therefore, their presence is also doubtful; There is a serious doubt regarding the place of occurrence also. That apart, all the four eyewitnesses are interested and related witnesses and their testimonies are not reliable and trustworthy, holding so, the trial court acquitted all the accused.



14. A Perusal of Ex.P.1, complaint said to have given by P.W.1, it is seen that the occurrence said to have taken place on 29.09.2004 at about 2.00 p.m., for which Ex.P.1 complaint has been filed at about 6.00 p.m., with a delay of four hours. It is the evidence of P.W.1 that after the occurrence, both P.W.1 and the deceased went to the house and waited there for one hour, their relatives came to their house and there was a consultation. In Ex.P.1, complaint, it is only stated that A-1 in this case pushed P.W.1 and attacked her in the chest and A-2 pushed the deceased and kicked the deceased in the chest and there is no mention that A-1 attacked the deceased with weeding hook. According to P.W.11, the complaint was treated as C.S.R, but to that effect no records were produced. Ultimately, the complaint was registered on the next day ie., on 30.09.2004, at about 6.30 p.m., nearly after 24 hours after the occurrence and the delay was not properly explained by the prosecution.

15. So far as the eyewitnesses are concerned, the trial Court considering the entire evidence, has come to a conclusion that their evidence is not reliable and untrustworthy, also doubted the presence of the four eyewitnesses. Even though P.W.1 is stated to be an injured in the occurrence, from the records, it is seen that she did not sustain any injury. That apart, in the cross-examination of P.W.1, has clearly stated that in the occurrence, A-3 also sustained injury, and he along with his wife, came to the police station and lodged a complaint and they were also taken to the hospital. P.W.1 has also admitted that, A-3 has given a complaint stating that, P.W.1, her son-in-law and the deceased, attacked A-3 and his wife, and caused injuries. That complaint has been suppressed by the prosecution and the injuries sustained by A-3 has not been explained. From that we can only presume that the prosecution has suppressed the genesis of the crime. The trial Court considering all those materials, acquitted all the accused.

16. Law is well settled, that, in the appeal against acquittal, the order of acquittal should not be lightly interfered with by the appellate Court, and the appellate Court, should give proper weightage and consideration to the views of the trial Court. The appellate Court should not ordinarily set aside the judgment of acquittal in a case where two views are possible, though the view of the appellate Court may be the more probable one. The Honourable Supreme Court in **Babu vs. State of Kerala** reported in **(2010) 3 SCC (Cri) 1179**, has held as follows:

"12. This court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial Court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may



be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial Court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject matter of scrutiny by the appellate court. (Vide *Balak Ram v. State of U.P.* (1975) 3 SCC 219; 1974 SCC (cri) 837; *Shambhoo Missir & Anr. v. State of Bihar* AIR 1991 SC 315; *Shailendra Pratap & Anr. v. State of U.P.* (2003) 1 SCC 761; *Narendra Singh v. State of M.P.* (2004) 10 SCC 699; *Budh Singh & Ors. v. State of U.P.* (2006) 9 SCC 731; *State of U.P. v. Ramveer Singh* (2007) 13 SCC 1025; *S. Rama Krishna v. S. Rami Reddy* AIR 2008 SC 2066; *Arulvelu & Anr. Vs. State* (2009) 10 SCC 206; *Perla Somasekhara Reddy & Ors. v. State of A.P.* (2009) 16 SCC 98; and *Ram Singh alias Chhaju v. State of Himachal Pradesh* (2010) 2 SCC 445).

13. In *Sheo Swarup and Ors. v. King Emperor* AIR 1934 PC 227, the Privy Council observed as under:

"...the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses...."

14. The aforesaid principle of law has consistently been followed by this Court. (See: *Tulsiram Kanu v. The State* (AIR 1954 SC 1); *Balbir Singh v. State of Punjab* (AIR 1957 SC 216); *M.G. Agarwal v. State of Maharashtra* (AIR 1963 SC 200); *Khedu Mohton & Ors. v. State of Bihar* (1972 2 SCC 450); *Sambasivan and Ors. v. State of Kerala* (1998) 5 SCC 412; *Bhagwan Singh and Ors. v. State of M.P.* (2002) 4 SCC 85; and *State of Goa v. Sanjay Thakran and Anr.* (2007) 3 SCC 755).



15. In *Chandrappa v. State of Karnataka* (2007) 4 SCC 415, this Court reiterated the legal position as under:

"(1) An appellate court has full power to review, re-appreciate 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 emphasise 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 is 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."

16. In *Ghurey Lal v. State of Uttar Pradesh* (2008) 10 SCC 450, this Court re-iterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the



demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In *State of Rajasthan v. Naresh @ Ram Naresh* (2009) 9 SCC 368, the Court again examined the earlier judgments of this Court and laid down that an "order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused."

18. In *State of Uttar Pradesh v. Banne alias Baijnath & Ors.* (2009) 4 SCC 271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances includes:

i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

ii) The High Court's conclusions are contrary to evidence and documents on record;

iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

v) This Court must always give proper weight and consideration to the findings of the High Court;

vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal.

A similar view has been reiterated by this Court in *Dhanapal v. State by Public Prosecutor, Madras* (2009) 10 SCC 401.

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial Court's



acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

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17. Keeping the above principle in mind, we have considered the judgment of the trial Court, and we are of the view that the findings of the trial cannot be held as perverse and no interference is required.

18. In the result, we find no merit in this appeal and the same deserves to be dismissed. Accordingly, this Criminal Appeal is dismissed and the acquittal of the accused is hereby confirmed.

Sd/-

Assistant Registrar (AE)

// True Copy //

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Sub Assistant Registrar (CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Sessions Judge,
Sivagangai.
- 2.The Judicial Magistrate,
Devakottai.
- 3.The Inspector of Police,
Thiruvegamputhur Police Station,
Sivagangai District.
- 4.The Director General of Police,
Mylapore, Chennai-4.
- 5.The District Collector,
Sivagangai District.
- 6.The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,



7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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