



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.12.2021

Delivered on : 23.12.2021

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN**

**and**

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

CrI.A.(MD)No.142 of 2015

Mahadevi,  
W/o.Late.Muthukumara Venkatachalapathy @ Thiruppathy  
... Appellant / P.W.1

-VS-

- 1.State Rep. by  
The Inspector of Police,  
Ettayapuram Police Station,  
Ettayapuram,  
Thoothukudi District.  
(Crime No.86 / 2010) ... 1<sup>st</sup> respondent / Complainant
- 2.Mareeswaran, S/o.Subbaiah
- 3.Suresh @ Suresh Kumar, S/o.Krishnasamy
- 4.Velmurugan, S/o.Madasamy
- 5.Maharajan, S/o.Kuttipal ... Respondents 2 to 5 /A1 to A4

**Prayer:-** Appeal filed under Section 397(1) read with Section 401 of Cr.P.C., to call for the records in S.C.No.115 of 2011, on the file of the Additional Sessions Judge/Fast Track Court No.I, Thoothukudi, and set aside the judgment, dated 26.08.2010.

For Appellant : Mr.R.Anand

For Respondent No.1 : Mr.S.Ravi  
Additional Public Prosecutor

For Respondent Nos.2 to 5 : Mr.S.Ramasamy  
Legal Aid Counsel

### JUDGMENT

**[Judgment of the Court was made by Dr. G.JAYACHANDRAN, J.]**

This appeal against acquittal is preferred by the de-facto complainant, who is none other than the wife of the deceased, who was alleged to be murdered by the respondents 2 to 5 on the early hours of 13<sup>th</sup> June, 2010.



2.Thirupathi, the husband of the appellant Mahadevi was done to death on 13.06.2010, at 00.30 hours, near the Pond of Vallampatti Village. About the incident, the first information was given by the appellant to the Ettayapuram Police, naming 4 persons as assailants. The Ettayapuram Police, in turn, registered a case in Crime No.86 of 2010 for the offences punishable under Sections 341 and 302 of I.P.C. against those 4 persons and took up the investigation. Final report was laid against Mareeswaran, Suresh @ Sureshkumar, Velmurgan and Maharajan for offences under Sections 341 and 302 of I.P.C. The case was committed to Court of Session and taken on file as S.C.No. 115 of 2011.

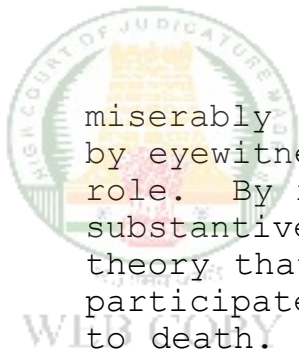
3.The Sessions Court framed charges against the accused under Sections 341 and 302 of I.P.C. To prove the charges, 18 witnesses, 23 exhibits and 8 Material Objects were relied by the prosecution. On appreciating these evidence, the trial Court acquitted all the 4 accused, vide its judgment dated 26.08.2011 on the ground that there is much contradictions with regard to date of occurrence, there is inordinate delay in F.I.R. reaching the Court, the motive incident is an improvements and the medical evidence does not support the prosecution case.

4.Not being satisfied by the order of acquittal, the appellant herein, who is the de-facto complainant, examined as P.W.1, initially, preferred Revision in CrI.R.C.(MD)No.947 of 2011 before this Court against acquittal. Later, the same has been converted as Appeal in view of the subsequent amendment in Code of Criminal Procedure and renumbered as CrI.A.(MD)No.142 of 2015.

**Gist of the grounds raised in the Appeal against acquittal:**

5.In this appeal, it is contended that, the trial Court erred in discarding the evidence of P.W.1 by appreciating minor discrepancies in her testimony, which are not fundamental to the facts of the case. The trial Court failed to take note of the fact that this witness is a rustic witness and not able to recollect the exact date of occurrence, one year after the occurrence. Before the incident, on 11.06.2010 the deceased had a wordy quarrel with the first accused for not printing his name in the temple festival notice and for not inviting him for the festival and honour him. On 12.06.2010 the deceased picked quarrel with one Krishnasamy and his wife (parents of A-3) regarding the same issue and assaulted them. These two incidents were the motive for the accused persons to gather at the house of the deceased on 12.06.2010 half past midnight and called him out from the house, chased the deceased towards the Village Pond and attacked with stick indiscriminately. While so, the error of P.W.1 mentioning 12.06.2010 as Saturday instead of Friday, which is very trivial contradiction and same not fundamental, cannot be a ground to acquit the accused persons.

6.The trial Court failed to appreciate the prosecution case in its entirety and has hurriedly concluded that the prosecution has



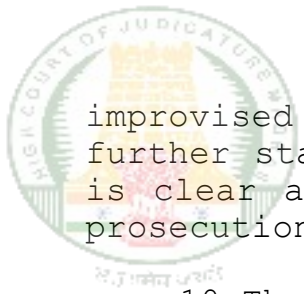
miserably failed to prove the motive. In a case of direct evidence by eyewitness for occurrence of crime, motive does not play a vital role. By referring the inquest report, which cannot be treated as a substantive evidence, the trial Court erred in believing the defence theory that the deceased quarrelled with the Villagers, who came to participate in the Kabaddi competition and they chased him and done to death. Thus, by improper and erroneous appreciation of evidence, the trial Court has acquitted the accused leading to miscarriage of justice.

7.The trial Court erred in holding there was inordinate delay in forwarding the F.I.R. to the Court. In fact, the occurrence took place during the midnight and wee hours of 13.06.2010. The F.I.R. forwarded to the Court in the morning and reached the Court at 09.05 a.m. on 13.06.2010. The time taken to forward the F.I.R. to the Court is reasonable and there is nothing to suspect about the veracity of the F.I.R. because it reached the Court.

8.Even though there is no contradiction in the medical evidence, the trial Court has erred in holding so. Just because the postmortem Doctor has answered in affirmative that there is possibility of sustaining the ante-mortem injuries if one assaulted with iron rod. When the medical evidence is clear and categorical about the homicidal violence, the trial Court ought not to have held that the medical evidence does not support the prosecution case.

9.The learned counsel for the respondents 2 to 5 appointed by the Legal Services Authority, would submit that, there is no error in the trial Court judgment and appreciation of evidence. The view of the trial Court is reasonable and the view, which is in favour of the accused, has been accepted by the trial Court. The testimony of P.W.1 not only lack corroboration, but it also suffers self-contradiction. She is the wife of the deceased and interested witness. She and her deceased husband were aggrieved by the fact that her husband was not given first honour in the temple festival and they believe that the parents of A-3 and the respondents 2 to 5 are responsible for depriving the first honour. Therefore, the deceased was quarrelling with the Villagers. On the incident day, the deceased caused ruckus during the festival and broke the tubel ights. He picked quarrel with the Villagers, who came to participate in the Kabaddi competition. These facts are admitted by the mother-in-law of the deceased (P.W.2) in the cross-examination. P.W.3, Balamurugan, who is cited as eyewitness to the occurrence in the F.I.R., had turned hostile and did not support the version of P.W.1. Likewise, P.W.15, the brother of the deceased cited as occurrence witness, turned hostile and did not support the prosecution case. The testimony of P.W.4, who is the brother-in-law of the deceased and brother of P.W.1, is unreliable, since his presence at the time of occurrence not whispered either by P.W.1 or P.W.2 in their deposition. Further, the Investigating Officer [P.W.16], who filed

<https://hcds.courts.gov.in/hcdsportal>



improvised her earlier statement. He also admits that P.W.1 in her further statement has not mentioned the presence of P.W.4. Thus, it is clear as crystal that this witness is a planted witness by the prosecution, which has been rightly disbelieved by the trial Court.

10. Therefore, the learned counsel for the respondents 2 to 5 submitted that the trial Court judgment of acquittal has to be confirmed and the appeal against acquittal has to be dismissed.

11. The point for determination is whether the trial Court judgment of acquittal deserves to be interfered?

12. Commencing from the decision of the Judicial Committee of the Privy Council in **Sheo Swarup Vs. King Emperor (1934) 61 IA 398** till **Suraj Singh Vs. State of U.P.**, the parameters laid by the Hon'ble Supreme Court in case of reversing the order of acquittal as capsulized in **Chandrappa and others Vs. State of Karnataka (2007 (4) SCC 415)** are as follows:-

(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 emphasis 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.

13. The prosecution to prove the charges against the respondents 2 to 5 have examined 18 witnesses. The star witness to the prosecution is P.W.1, who is the wife of the deceased. The criminal law was set into motion on her complaint, which was registered as

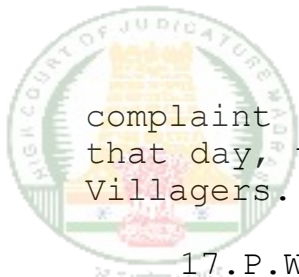


first information. Her complaint dated 13.06.2010 discloses the quarrel with the accused persons on 11.06.2010 regarding the denial of first honour to the deceased. Further says, on 13.06.2010 at 00.30 hours, all the four accused came to her house and called her husband out. When her husband came out of the house, the accused tried to attack her husband with stick. Her husband got panic and started running towards the Pond. All the four accused chased him. She and Balamurgan (P.W.3) followed them towards the Pond. She saw the four accused hitting her husband repeatedly and done to death.

14. In her deposition, P.W.1 has stated that usually, every year in the Karuppasamy Koil Festival, the Villagers used to give the first honour to her husband. For the year 2010, his name was not printed in the festival notice, so, on 11.06.2010 [Saturday], her husband questioned the first accused why his name not printed in the notice. Four persons, who were there, told him, "'if he is alive, they will give him first honour'" (euphemistic expression to indicate he will die soon/will be done to death soon). She pacified her husband and brought him to home. At that time, it was 11.00 p.m. Then her husband went again and picked quarrel with one Krishnasamy (P.W.6) and attacked him and her wife (P.W.5). She again went and brought him back home. At home, her husband took his supper. Thereafter, at about ½ past midnight, i.e., 00.30 hours, all the four accused came to her house and called her husband out and shouted why should they give him the first honour. Her husband, who came out on seeing the accused were carrying stick, started running towards the Pond. She ran after them pleading to spare her husband.

15. One of the reasons for the trial Court to disbelieve the evidence of P.W.1, is the contradictions about the date and sequence of event mentioned in the F.I.R. and her deposition. The trial Court took notice of the fact that 11.06.2010 was not Saturday as deposed by P.W.1. It was a Friday. In the complaint Ex.P.1, she has stated that Balamurugan (P.W.3) accompanied her when she ran after the assailants and saw them attacking her husband. Whereas, in her deposition, she has not whispered about the presence of Balmurugan when the incident took place. The said Balamurugan, who was examined as P.W.3 did not support the case of the prosecution and he turned hostile.

16. P.W.2 is the mother of P.W.1 and mother-in-law of the deceased. She is not the resident of Valampatti Village. She had deposed that she resides at Atthikinaru Village. P.W.1 is her daughter. To attend the festival, she came to Valampatti Village. On Saturday, there was quarrel between the accused persons and the deceased for not printing his name in the notice. At about 12 'O' Clock midnight, the accused persons came to the house of the deceased and called him out saying they have come to honour him. On seeing them armed with sticks, the deceased ran towards the Pond, the accused persons chased him and attacked indiscriminately. She and Balamurugan went to Ettayapuram Police Station and gave the



complaint Ex.P.1. In the cross-examination, P.W.2 admits that on that day, the deceased broke the tube lights and quarrelled with the Villagers.

17.P.W.4, the brother of P.W.1, had deposed that on 12.06.2010, his mother (P.W.2) went to P.W.1's house to attend the temple festival. Night at 12.30, he heard noise from P.W.1's house. He and P.W.2 rushed to P.W.1 house and saw the accused hitting the deceased near the Pond. Police did not enquire him. The evidence of this witness being an interested witness, has to be scrutinised with caution. P.W.4's presence at the scene of occurrence not spoken by P.W.1 or P.W.2. He had not given any previous statement to the police. According to this witness, he and his mother P.W.2 came to the scene of occurrence after hearing the commotion near P.W.1's house. He in the cross-examination admits that he did not accompany his sister (P.W.1) and mother (P.W.2) to the police station. While P.W.1 as well as P.W.2 had spoken about the earlier quarrel between the deceased and the Villagers on that day, this witness though deposed that he was in the Village on that day, feigns ignorance about the incident. Since the inconsistency between these three witnesses about the occurrence are fundamental in nature and their presence at the time of occurrence and witnessing the same is doubtful, the trial Court had concluded that the murder could not have happened the manner in which the prosecution has projected.

18.P.W.5 and P.W.6 are wife and husband. P.W.6 had deposed that on 12.06.2010 at 11.00 p.m., the deceased came to his house called him out, when he came out from his house, the deceased hit him on the forehead with an iron rod. He lost his conscious. His wife P.W.5 had deposed that on 12.06.2010 the deceased came to their house and called her husband to come out. When her husband came out, she accompanied him. The deceased hit her husband and her with an iron rod. They went to Ettayapuram Police reported about the incident and then went to the Hospital. As per the evidence of P.W.6, he regained his conscious after 3 days. P.W.11, the Special Sub Inspector of Police, had deposed that on 13.06.2010 at 04.00 a.m. on receipt of accident intimation, he went to Kovilpatti Government Hospital, where he was informed that the patients shifted to Government Medical College Hospital. So, he went there and recorded the statement of P.W.5 - Saraswathi and registered a case in Crime No.87 of 2010 under Sections 294,324 and 506(ii) of I.P.C., on 13.06.2010 at 11.00 p.m.

19.From the evidence of P.W.5 and P.W.6, it is established that on 12.06.2010, the deceased had attacked P.W.5 and P.W.6 and caused them head injuries. P.W.1 also had mentioned about this quarrel in her complaint Ex.P.1. The prosecution though through P.W.11 had spoken about the registration of F.I.R. about this incident, that F.I.R. is not produced. Following this incident, the murder has taken place. A-1 is son of P.W.5 and P.W.6. Therefore, strong motive is attributed to the accused.



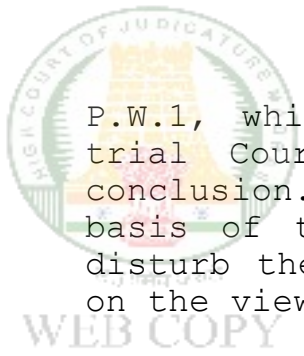
20. In defence, the learned counsel for the respondent 2 to 5 argues that, when the Villagers were celebrating the temple festival, the deceased infuriated by not printing his name in the festival notice and for not giving the first honour, which he used to get previously, picked quarrel with the Villagers and broke the tube lights. He went to the house of P.W.5 and P.W.6 and brutally attacked them with iron rod. Therefore, the Villagers who gathered for the festival and to participate in the Kabaddi competition attacked him. Since he succumbed to the injuries, they drag him to the Pond and left. In view of the previous enmity, P.W.1 has implicated A-1 to A-4 as if they come to her house, called her husband out and chased him and attacked with sticks, however, her evidence is not consistent about the dates and day due to the falsity.

21. To probablise the theory of defence, the learned counsel rely on the cross-examination of P.W.2 and P.W.5, who had deposed that before the incident, the deceased broke the tube lights and picked quarrel with the Villagers. As well as the deposition of P.W.1, who had spoken about the two quarrel incidents, first with the A-1 to A-4 and next with P.W.5 and P.W.6. The inquest report Ex.P.19 also is in support of the defence put forth by the accused. The trial Court, in view of the inconsistency in the prosecution evidence and lack of corroboration to P.W.1's version, had doubted the manner and place of occurrence, so extended the benefit of doubt to the accused.

22. Whereas, the learned counsel for the appellant's contention is that, the contradictions noted by the trial Court regarding the confusion about the dates and days in the deposition of P.W.1 will not affect the material part of her evidence. She being a rustic Village lady, her evidence acceptable to the extend dependable is sufficient to prove the guilt of the accused. The ocular evidence should prevail over the medical evidence of the expert.

23. It is trite that where the eyewitnesses' account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. However, the evidence in this case not only the alternate possibilities for injuries found on the deceased elucidated in the cross-examination, the eyewitness account itself found incredible and not trustworthy. The trial Court apart from pointing out material contradiction about the dates and day in P.W.1's evidence, also found that her ocular evidence lack corroboration and contrary to the inquest report about the probable cause for the murder. The trial Court has discarded the evidence of P.W.2 and P.W.4 in toto and doubted the reliability of P.W.1 in view of the contradictions and improbability of being present at the scene of crime.

24. On re-appreciation of evidence, we are of the view that this case cannot be based on the solitary evidence of



P.W.1, which is full of infirmity. Hence, the conclusion of the trial Court does not fall under the category of unreasonable conclusion. Therefore, when two reasonable views 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 based on the view favorable to the accused.

25.In the result, the trial Court judgment, dated 26.08.2010, made in S.C.No.115 of 2011, is confirmed. The appeal against acquittal is dismissed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

- 1.The Additional Sessions Judge,  
[Fast Track Court No.I],  
Thoothukudi.
- 2.The Inspector of Police,  
Ettayapuram Police Station,  
Ettayapuram,  
Thoothukudi District.
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

**Copy to:-**

The Section Officer,  
Criminal Section (Records),  
Madurai Bench of Madras High Court,  
Madurai.

**CrL.A. (MD) No.142 of 2015**  
**23.12.2021**

MGJ(05.01.2022) 8P 6C