



CrL.A.(MD) No.381 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.12.2021

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

CrL.A. (MD) No.381 of 2018

Nambirajan ... Appellant/ Defacto Complainant

-vs-

1.State represented by
the Inspector of Police
Veeravnallur Police Station
Thirunelveli District
(In Crime No.140/2013)

... Respondent / Complainant

2.M.Anantharaj

3.Ilayaraja

4.M.Surendren

5.M.Prabhakaran

6.M.Hariramsait

7.P.Kasidurai

8.S.Suman

9.C.Abimannan

10.M.Raja @ Maharaja @ Sureshraj

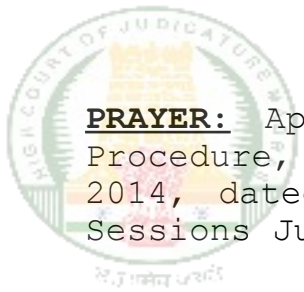
11.P.Chintha @ Chithamparam

12.P.Ganesan

13.Sekar

14.Magesh @ Mageswaran

... Respondents/ Accused



PRAYER: Appeal filed under Section 372 of the Code of Criminal Procedure, 1898, to call for the records in Sessions Case No.267 of 2014, dated 03.08.2017, on the file of the learned 4th Additional Sessions Judge at Thirunelveli and set aside the same as illegal.

For Appellant : Mr.D.Balamrugapandi

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor for R1
R3 - Died
Mr.A.Haja Mohideen
Legal Aid Counsel for R2, R4 to R14

J U D G M E N T

S.VAIDYANATHAN, J.

and

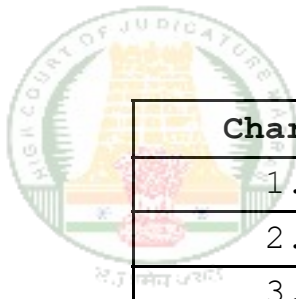
DR.G.JAYACHANDRAN, J.

This criminal appeal is directed against the order dated 03.08.2017 passed in S.C.No.267 of 2014, whereby the Trial Court, after considering the evidence let in by the prosecution, found that the prosecution has not proved the guilt of the accused for committing the death of one Vellapandi and acquitted them. Being aggrieved by the order of acquittal, P.W.1 / first informant has preferred this criminal appeal.

2. Facts of the case in nutshell:

2.1. This is a case of retaliatory murder. There was long-standing fend between two groups one led by Kombiah and another led by Prabhakaran. The deceased in this case is the husband of Kombiah's sister. On 12.05.2013, at about 06.30 p.m., when the deceased was walking along the canal road, he was brutally attacked by the accused persons with deadly weapon and fled away. The criminal law was set in motion based on the complaint given by P.W.1, which was registered by P.W.14 and taken up for investigation. Subsequently, on the complaint given by P.W.1 to the higher officials, investigation was entrusted to the Deputy Superintendent of Police, Tirunelveli, who completed the investigation and filed the final report. Out of 15 accused, one was juvenile and another was murdered before facing trial.

2.2. Based on the final report, The Trial Court framed the following charges against the accused:



Charge	Penal Provisions	Accused
1.	120-B I.P.C.	A3 to A7
2.	148 I.P.C.	A1 to A13
3.	341 I.P.C.	A1 to A13
4.	294(b) I.P.C.	A4
5.	302 I.P.C.	A1 to A4, A6, A8 & A9
6.	302 r/w 149 I.P.C.	A5, A7, A10 & A11 to A13

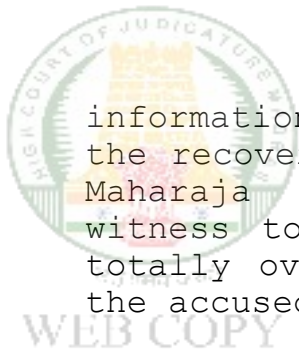
2.3. Since the accused denied the charges, they were subjected to trial.

2.4. To prove the case, the prosecution examined 21 witnesses, marked 50 documents and 19 material objects. On the side of the accused, no evidence was let in and one document was marked.

2.5. The Trial Court, after appreciating the evidence, rendered the verdict of not guilty.

3. The learned counsel appearing for the appellant would specifically submit that the Trial Court erred in rejecting the evidence of P.W.1, who has spoken about the overt act of the respective accused, which is tallied with the injuries found in the dead body and corroborated by the Postmortem Doctor (P.W.12). Further, the learned counsel would submit that the Trial Court ought not to have considered the 164 Cr.P.C. statement of one Mariappan, who was not testified before the Court. It is the specific plea of the appellant that the contradictions between the previous statement of P.W.1 recorded by the learned Judicial Magistrate and his deposition was because of the subsequent Investigating Officer, who misled the witness to say a contrary statement before the learned Judicial Magistrate when his 164 Cr.P.C. statement was recorded and therefore, the contradictions ought not to have been stood in the way of convicting the accused against whom P.W.1 has cogently attributed overt acts and his presence in the scene of occurrence has not been impeached.

4. The learned counsel for the appellant would further submit that the Trial Court ought to have considered the first information report and the testimony of P.W.1, which are specifically corroborated by P.W.2 in respect of the overt act of the accused. The observation of the Trial Court that the evidence placed before the Court is mixed with false and truth, inseparable and therefore, benefit of doubt has to be extended to the accused, is contrary to the facts and circumstances of the present case. The first



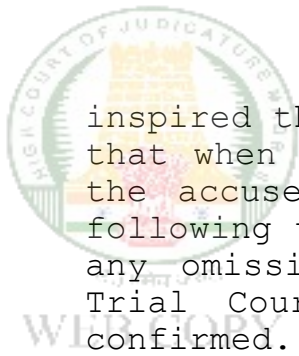
information report and the evidence of P.Ws.1 and 2, coupled with the recovery of weapon, based on the confession statement of Raja @ Maharaja (A9), which has been corroborated by the independent witness to the seizure mahazar, namely, P.W.5 - Vellapandi, were totally overlooked by the Trial Court leading to acquittal of all the accused.

5. The learned Additional Public Prosecutor would submit that the evidence of P.W.1, though it was overstated, but not wholly unreliable and in the light of the evidence of P.W.2, who had deposed that he saw the accused persons fleeing away from the scene of occurrence, if taken into consideration and applied the principle of removing the grain from the chaff, the guilt of the accused gets established.

6. The Legal Aid Counsel appearing for the accused / respondents would submit that the very presence of P.W.1 is highly doubtful since his case has not been corroborated by P.W.2 while he gave his previous statement before the learned Judicial Magistrate and recorded under Section 164 Cr.P.C. Further, there is a discrepancy in the prosecution case regarding where the dead body was lying and its position. In the cross-examination, the falsehood of P.W.1 witnessing the occurrence has been established by showing the photograph of the deceased person. The learned counsel would further submit that the enmity between the two groups has prompted P.W.1 to rope all the family members in the first information report, which is collection of falsehood and embellishment.

7. Heard the learned counsel for the appellant, learned Additional Public Prosecutor for the State and the Legal Aid Counsel appearing for the accused / respondents.

8. On perusal of the testimony of the witnesses and the Judgment of the Trial Court, this Court concurs with the view of the Trial Court that the falsehood and truth in the case of the prosecution are intertwined and mixed up inseparable, particularly, when P.W.1, in his complaint (Ex.P1) and his deposition has specifically stated that at the time of the occurrence, the deceased Vellapandi was going ahead of them and he along with Murugan (P.W.2) and Mariappan (not examined) were following the deceased Vellapandi, P.W.2 - Murugan, in his statement before the learned Judicial Magistrate had stated that he came to the scene of occurrence on hearing the cry of P.W.1 and he did not see the occurrence. However, later, in his deposition before the Court, P.W.2, in contradiction to his previous statement given under Section 164 Cr.P.C., has improvised and embellished his version. The overstatement and embellishment of P.W.1 and P.W.2 quite contrary to their respective previous statement recorded under Section 164 Cr.P.C., do not inspire the confidence of this Court as it not



inspired the confidence of the Trial Court. The law is well settled that when two reasonable views are possible, the view in favour of the accused has to be taken into account for his acquittal. On following the said principle, as the Appellate Court, we do not find any omission or unreasonable in appreciation of evidence by the Trial Court. Hence, its order of acquittal is liable to be confirmed. Except to point out the error of the Trial Court relying the previous statement of the witness (Mariappan) recorded under Section 164 Cr.P.C., for contradiction, under Section 156 of the Evidence Act, 1872, when in fact the said Mariappan not given any testimony in this case during trial.

9. In the result,

- the criminal appeal is dismissed;
- the Judgment, dated 03.08.2017, passed in S.C.No.267 of 2014, by the learned IV Additional Sessions Judge, Tirunelveli, is confirmed;
- We place on record our appreciation to Mr.A.Haja Mohideen, learned counsel, for assisting us in this case and we direct the High Court Legal Services Committee, Madurai, to pay him a sum of Rs.15,000/- (Rupees fifteen thousand only) for the service he recorded.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

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 Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

- 1.The IV Additional Sessions Judge,
IV Additional Sessions Court, Thirunelveli.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



3.The Inspector of Police
Veeravnallur Police Station
Thirunelveli District

4.The Officer-Incharge,
High Court Legal Services Committee,
Madurai.

5.The Section officer, Criminal Section,
Madurai Bench Of Madras High Court, Madurai.

+1 CC to M/s.D.BALAMURUGAPANDI, Advocate (SR-37820[F] dated
08/12/2021)

Cr1.A. (MD) No.381 of 2018
08.12.2021

RD(22.12.2021) 6P 8C