



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.259 of 2018

Noorjahan .. Appellant/P.W.4

-vs-

1.The Inspector of Police,
Kenikarai Police Station,
Ramanthapuram District.
(In Crime No.462 of 2015)

.. 1st respondent/complainant

2.Mohamed Yasar Arafath
3.Jahir Hussian
4.Sahubar Sadiq
5.Ahamed Ali
6.Al Ameen

.. Respondents 2 to 6/
Accused Nos.1 to 5

PRAYER:Criminal Appeal filed under Section 372 of the Code of Criminal Procedure against the judgment dated 16.04.2018 made in S.C.No.138 of 2016 by the Additional District and Sessions Judge, Ramanathapuram and set aside the same as illegal and convict the accused.

For Appellant :Mr.R.Ramanujam
for Mr.R.Gandhi

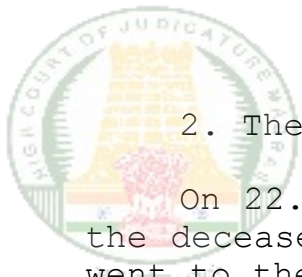
For R1 :Mr.S.Ravi,
Additional Public Prosecutor

For R2 to R6 :Mr.J.Sulthan Basha, for
M/s.Ajmal Associates

JUDGMENT

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

There are five accused in S.C.No.138 of 2016 for the offence under Sections 147, 148, 307, 302 r/w 149 I.P.C. The trial Court after full-fledged trial, acquitted all the accused. Now, challenging the order of acquittal, P.W.4, who is the sister of the deceased is before this Court with this Criminal Appeal.



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

On 22.10.2015, at about 01.00 p.m., there was a quarrel between the deceased Rajkapoor and A-1 in this case. Thereafter, A-4 & A-5 went to the house of the deceased and searched for him and on coming to know about the same, the deceased and P.W.2, went to the shop of the first accused and questioned them. At that time, there was a quarrel, and all the five accused formed an unlawful assembly and attacked both P.W.2 and deceased and caused the death of Rajkapoor and in the occurrence P.W.2 also got seriously injured. Based on the complaint given by the father of P.W.2, the injured witness, a case in Crime No.462 of 2015 was registered for the offence under Sections 147, 148, 307, 302 r/w 149 I.P.C., P.W.13-the Sub-Inspector of Police working in the respondent police station, on completion of investigation, filed the final report before the jurisdictional Court.

3. Considering the 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 13 witnesses, marked 35 documents and also produced 11 material objects.

4. Out of the witnesses examined, P.W.1 is the father of P.W.2 the injured witness and he is the author of the F.I.R. He has turned hostile. P.W.2, the injured witness to the occurrence. He has also turned hostile. P.W.3 is another eyewitness to the occurrence. He was also treated as hostile witness. P.W.4 is the sister of the deceased. She is only a hearsay witness and her evidence has no substance. P.W.5 is the witness for the arrest of A-2. He has also turned hostile. P.W.6 is the witness to the Observation Mahazar and also confession of A-2. He has also turned hostile. P.W.7 is an Officer working in the Forensic Laboratory, Ramanathapuram, he sent the material objects to the Forensic Laboratory, Madurai, for chemical examination.

5. P.W.8 is the Village Administrative Officer. He is the witness to the arrest of A-1 and recovery of M.O.1-Knife, M.O.2-Iron Rod, M.O.3 and M.O.4-Knives used by the accused. P.W.9 is the Head Constable. He identified the body for postmortem autopsy. P.W.10 is the Inspector of Police, who recorded the statement of P.W.1 and based on that, registered the F.I.R in Crime No.462 of 2015. P.W.11 is a Doctor working in Government Medical College Hospital, Madurai and he conducted postmortem autopsy on the dead body and given Ex.P21-Postmortem certificate and found the following injuries:

"The following ante mortem injuries are noted on the body:

1. Crescent Shaped Healed abrasions 9 in nos, each measuring 2.0cmx0.5cm to 3cm x 0.5cm respectively noted on vertex.



2. Healed sutured wound 5cm x 1cm x bone deep on mid parietal region.
3. Healed sutured wound 4cm x 1cm x bone deep on left occipital region, (Horizontal vertical).
4. Healed sutured wound 7cm x 1cm x bone deep on left temporal region, (Horizontal vertical).
5. Healed sutured wound 2cm x 1cm x bone deep on left frontal region.
6. Healed abrasion 4cm x 3cm on left elbow.
7. Healed abrasion 2cm x 1cm on right knee.
8. partially healed vertically oblique sutured wound measuring 3.0cm x 1.0cm x muscle deep noted on upper part of back of middle of chest 8cm below root of neck.
9. Healed incised wound 6cm x 0.5cm noted back of right side of chest, 12cm below right shoulder blade.

On dissection of Chest:

Fracture rib of 7th with surrounding bruising noted along the anterior axillary line on right side. Right pleural cavity contains 50ml of fluid blood. Left side empty.

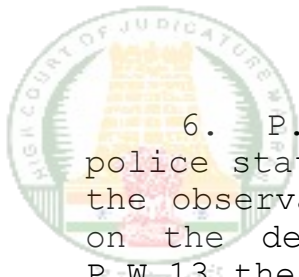
On dissection of Scalp, Skull & dura:

Subscalpal contusion measuring 14cm x 6cm on left fronto parieto temporal region and 13cm x 6cm on right parieto temporo occipital region. Linear fracture 15cm in length on left temporo occipital region and fracture 15cm in length right temporo occipital region. Extra dura hematoma 18cm x 6cm x 1cm on mid occipital bitemporal lobe. Diffuse subdural haemorrhage and subarachnoid haemorrhage noted on both cerebral hemispheres.

Other Findings:

Peritoneal cavity - empty; Pleural cavities - described; Pericardium - contains 15ml of straw colour fluid; Heart - right side fluid blood, left side empty; Coronaries - patent; Lungs - cut section - congested and basal consolidation in patches; Larynx & trachea - normal; Hyoid bone - intact; Stomach - contains 100ml of brown colour fluid, nil specific smell. mucosa - normal; Liver, Spleen & kidneys - cut section congested; Small intestine - contains 20ml of bile stained fluid, nil specific smell, mucosa - normal; Bladder - empty; Brain - described."

He was of the opinion that the deceased would appear to have died of multiple injuries and its complications there off.



6. P.W.12 is the Inspector of Police working in the respondent police station. He conducted the initial investigation and prepared the observation mahazar and rough sketch and also conducted inquest on the dead body and handed over the investigation to P.W.13. P.W.13 the Sub-Inspector of Police working in the respondent police station, completed the investigation and filed the final report.

7. The above incriminating materials were put to the accused under Section 313 Cr.P.C., and the accused denied the same as false. On their side, they have not examined any witnesses and marked any documents.

8. Having considered the above materials, the trial Court acquitted all the accused and now challenging the order of acquittal, P.W.4 is before this Court with this Criminal Appeal.

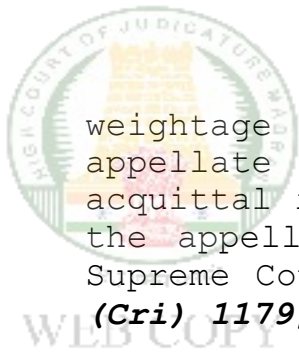
9. Mr. R. Gandhi, learned counsel appearing for the appellant would contend that even though all the eyewitnesses including the injured witness turned hostile, the arrest of all the accused and recovery of the weapons used in the occurrence, had been proved by the prosecution. That apart, the motive has also been proved against the accused. The trial Court without considering those important materials, wrongly acquitted all the accused and the finding given by the trial Court is perverse. Hence, the judgment of the trial Court is liable to be set aside.

10. Mr. J. Sulthan Basha, learned counsel appearing for the respondents 2 to 6/accused 1 to 5, would submit that all the eyewitnesses including the injured witness, turned hostile and there is no material available on record to implicate these accused. Considering those circumstances, the trial Court has rightly acquitted the accused and there is no perversity in the judgment of the trial Court, which does not require interference of this Court.

11. We have heard the submissions of Mr. S. Ravi, learned Additional Public Prosecutor appearing for the State also and perused the records carefully.

12. P.W.2 is the injured eyewitness to the occurrence and he has turned hostile. P.W.1 father of P.W.2 is the author of the F.I.R. He has also turned hostile. P.W.3 another eyewitness has also turned hostile. Apart from that, there is no other evidence available on record to show that only those accused attacked the deceased and caused his death. Even though there is some motive for the accused against the deceased, that itself cannot be a ground to reach a conclusion that those accused only committed the offence. Further, conviction cannot be recorded merely based on the arrest and recovery. The trial Court considering all those materials, rightly acquitted all the accused.

13. 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...."

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"(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(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.

(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."

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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."

14. 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.

15. 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 (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pm

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 Additional District and Sessions Judge,
Ramanathapuram.

2.The Inspector of Police,
Kenikarai Police Station,
Ramanthapuram District.



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

Copy to
The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-30705[F] dated
30/09/2021)

+1 CC to M/s.R.GANDHI, Advocate (SR-30805[F] dated 30/09/2021)
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MGJ(01.12.2021) 9P 8C