



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :05.10.2021

CORAM:

**THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN**

Crl.A. (MD) .No.551 of 2018

Pappathi

... Appellant /
Defacto Complainant/P.W.1

-vs-

1.The Inspector of Police,
Ambiligai Police Station,
Dindigul District. ... Respondent/Defacto Complainant

2.Kulanthaivel
3.Periyasamy
4.Ramasamy @ Poliammanoor Karar
5.Palanichamy Thevar
6.Sakthivel
7.Nattarayan
8.Selvan @ Selvaraj
9.Palaniammal
10.Chinnakannu @ Karuppathal
11.Ramathal ...Respondents/Accused

PRAYER : Criminal Appeal is filed under Section 372 of Cr.P.C., to call for records relating to the judgment passed in S.C.No.255 of 2010, dated 20.12.2011 on the file of the Additional District and Sessions Judge/Fast Track Court, Dindigul and set aside the same and allow the appeal and convict the respondents 2 to 11/accused 1 to 10 for the charges framed against them.

For Appellant : Mr.V.Chandrasekar

For R1 : Mr.A.Thiruvadikumar
Additional Public Prosecutor

For R2 to R11 : Mr.V.Kathirvelu
Senior Counsel
for Mr.S.Siva Thilakar



J U D G M E N T

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

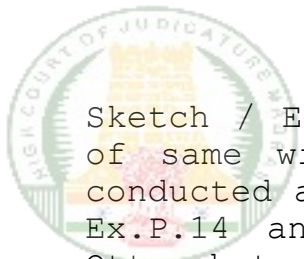
Challenging the order of acquittal, P.W.1-Pappathi, is before this Court with this appeal.

2. Totally there are ten accused in this case. The accused Nos.1 to 7 stood charged for the offences under Sections 148 and 302 of IPC, the accused Nos.8 to 10 stood charged for the offences under Sections 147, 341 and 302 r/w 149 of IPC and the accused Nos.1 to 10 stood charged for an offence under Section 506(ii) of IPC. By judgement, dated 20.12.2011, the trial Court acquitted all the accused from the charges. Now, challenging the order of acquittal, P.W.1 is before this Court.

3. The case of the prosecution, in brief, is as follows:

The deceased, in this case one Subramani @ Vellaichamy Gounder, is the husband of P.W.1 and brother-in-law of A1. The other accused are neighbouring land owners. Earlier, there was a civil dispute between the deceased family and A1's family and that was settled 11 years ago. In a tank-bund one Kulanthaivel Gounder, Periyasamy Gounder and others have agricultural lands. Subsequently, all the accused altered the tank-bund, as a road, for taking tractors to their land. In this regard, the deceased, on behalf of the public, has given a complaint to the Public Works Department and the District Collector also filed a Public Interest Litigation before this Court. Based on the order of this Court, the Public Works Department Authorities closed the tank-bund. It was the motive for the occurrence. On 01.04.2009, at about 09.00 p.m., both the deceased and P.W.1 while returning to their house, near Nachimuthu Gounder field, all the accused unlawfully assembled and A1 attacked the deceased with sickle on the left side of the head, left hand wrist and other parts of the body. A2 attacked him with knife. A3 attacked him with sickle on the left hand elbow. A4 attacked him with aruval on the back side of the head twice and other accused A5, A6 & A7 also attacked the deceased and also criminally intimidated P.W.1 and threatening her. Apprehending her life, she was hiding behind the bush for the whole night and on the next day morning, she went to the police station, given Ex.P1, complaint, before P.W.15, who is the Sub-Inspector of Police. After receipt of the complaint, she registered a case in Cr.No.89/2009 under Sections 341, 147, 148, 506(ii) and 302 of IPC. The printed FIR was marked as Ex.P12 and sent the same to the learned Judicial Magistrate No.I, Dindigul.

4. P.W.16, after receipt of the case records from P.W.15, informed the matter to the District Crime Branch for sending Sniffer dog and finger print expert to the occurrence place. Thereafter, he visited the scene of occurrence at 9.15 a.m., in the presence of witnesses, he prepared an Observation Mahazar / Ex.P2, Rough



Sketch / Ex.P15 and recovered the material objects in the presence of same witnesses. Thereafter, in the presence of witnesses, he conducted an inquest on the dead body and prepared an Inquest Report Ex.P.14 and he sent the dead body to the Government Hospital, Ottanchatram, for conducting postmortem/autopsy through P.W.14-Head Constable, then examined the witnesses and recorded their statements.

5. P.W.11-Dr.A.Muthuchamy working in the Government Hospital, Ottanchatram conducted an autopsy on the dead body and issued Postmortem Certificate (Ex.P5). He found the following injuries:

"Ext:

"(1) Cut injury over above upper lib LT side 7 x 3 c.m.,

(ii) cut injury over the middle nose and lt side face below LT eye 10 x 2 c.m.,

(iii) cut injury over lateral to LT eye 10 x 3 c.m.,

(iv) cut injury over RT parital 10 x 5 cm., up to bone depth.

(v) multiple lacerated injury over RT occipital to LT Occipital

crossing entire loss of skin subcutaneous tissue.

(vi) cut injury over LT wrist Bone injury 10 x 5 cm.

(vii) dap lacerated injury over LT elbow crossing dislocation

15 x 10 cm bone precluding B/n

(viii) other injury behind LT elbow 7 x 5 c.m.,

9) cut injury over RT henal near thumb.

10) lacerated injury over LT shoulder back 7 x 3 c.m.,

11) multiple small sized would over both side of back.

Internal

(1) Hyoid bone intact.

(2) Thorax on opening of thorax. No bony injury lungs. Congested.

(3) Heard Pale.

(4) Abdomen stomach empty.

(5) Other Organs normal.

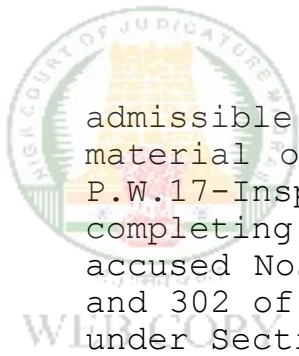
(6) Pelves and spinal column intact.

(7) Scalp and skull on opening of the scalp blood cloths present

over RT. Parital region.

(8) Opening of skull. Blood cloths. Present all over the brain. RT side parital bone fracture present 5 c.m., "

He has given an opinion that the deceased would appear to have died due to shock and haemorrhage. Then P.W.16 recorded the statement of witnesses and arrested some of the accused. Based on the



admissible portion of the confession statement, he had recovered the material objects. Thereafter, he handed over the case records to P.W.17-Inspector of Police for further investigation. P.W.17 after completing the investigation, filed the final report against the accused Nos.1 to 7 for the offence under Sections 147, 148, 506(ii) and 302 of IPC and against the accused Nos.8,9 & 10 for the offences under Sections 147, 148, 341, 506(ii) r/w 149 IPC.

6. Considering the above materials, the trial Court framed charges under Sections 148 and 302 of IPC against the accused Nos.1 to 7 and Sections 147, 341 and 302 r/w 149 of IPC against the accused Nos. 8 to 10 and Section 506(ii) IPC against the accused Nos.1 to 10 and the accused denied the same as false and opted for trial.

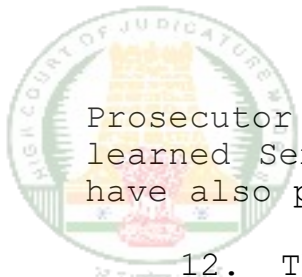
7. In order to prove its case, the prosecution examined as many as 17 witnesses as P.W.1 to P.W.17, marked 18 documents as Ex.P1 to Ex.P.18 and also produced 14 Material Objects.

8. Out of the witnesses examined, P.W.1 is the wife of the deceased and also the eye witness to the occurrence. P.W.2 is the brother-in-law of the deceased. He accompanied with P.W.1 to the police station. P.W.3 is the daughter of the deceased. She speaks about the motive. P.W.4 is the son of the deceased. He also speaks about the motive. P.W.5 stated that before the occurrence, both the deceased and P.W.1 came to his shop. P.W.6 also stated that on the date of occurrence he met the deceased. P.W.7 Village Administrative Officer, who is the witness to the arrest and recovery of material object. P.Ws.8 and 9 are the daughters of the deceased. They speak about the motive. P.W.10 is the owner of the land, where the dead body was found. P.W.11 is the doctor, who conducted postmortem. P.W.12 is the Village Administrative Officer, speaks about the extra judicial confession of A1. P.W.13 is the another Village Administrative Officer speaks about the arrest of the some of the accused and recovery of three Material Objects. P.W.14 is the Head constable. He handed over the dead body to the postmortem. P.W.15 is the Sub-Inspector of Police, who registered a case. P.W.16 is the Investigating Officer, who conducted the investigation. P.W.17 is also the another Investigating Officer, who laid the charge-sheet.

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

10. Having considered all the above materials, the trial Court found that the prosecution has not proved the guilt of the accused beyond reasonable doubt and acquitted the accused from all charges.

11. We have heard Mr.V.Chandrasekar, learned counsel appearing for the accused, Mr.A.Thiruvadikumar, learned Additional Public



Prosecutor appearing for the first respondent and Mr.V.Kathirvelu, learned Senior Counsel appearing for the respondents 2 to 11. We have also perused the records carefully.

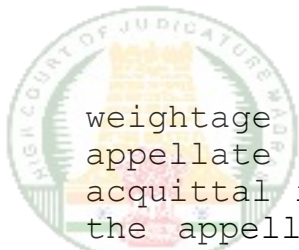
12. The learned counsel appearing for the appellant would submit that the prosecution has clearly proved the motive between the accused and the deceased. P.W.1 being the wife, her presence along with husband is natural, but the trial Court without any reason whatsoever, acquitted all the accused.

13. Mr.V.Kathirvelu, learned Senior Counsel appearing for the respondents 2 to 11/accused, would submit that it is a clear case of false implication. The occurrence took place at about 09.00 p.m., in an agricultural field and it has been reported only on the next day at 08.00 a.m., and the same has been reached to the Court at 04.15 p.m. There was a long delay for more than 12 hours for filing the complaint and there is also delay in reaching the FIR to the concerned Court and therefore, the presence of P.W.1 in the scene of occurrence is clearly doubtful, for that reason, the trial Court disbelieved the evidence of P.W.1 and acquitted all the accused. We find some force in the arguments advanced by the learned counsel for the respondents 2 to 11.

14. P.W.1 is one and only an eye witness to the occurrence. She is the wife of the deceased. According to her, on the date of occurrence, both P.W.1 and the deceased while they returning to their house, all the accused unlawfully assembled, attacked the deceased indiscriminately and caused his death. The occurrence had taken place at about 09.00 p.m., the complaint was given before the respondent police only on the next day at about 08.00 a.m., and the same was reached to the concerned Court at 04.15 p.m., even though the Court is very nearby to the police station. According to P.W.1, after the occurrence, all the accused have criminally intimidated her, she was hiding herself in the scene of occurrence all over the night and only in the next day morning, she went to the police station and has given a complaint. The trial Court disbelieved her evidence of P.W.1 holding that she is the interested witness and her evidence is not reliable.

15. P.W.1 is an interested witness. Even though there is no bar to consider the evidence of the interested witness, provided, her evidence must be reliable and trustworthy. But, in this case, the presence of P.W.1 at the time of occurrence is doubtful and the doubt has been strengthened by the long delay in filing the FIR and it is not safe to convict the accused on that doubtful testimony. Considering those circumstances, the trial Court disbelieved the evidence of P.W.1 and acquitted the accused.

16. Law is well settled, that, in an 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."

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 court 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(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

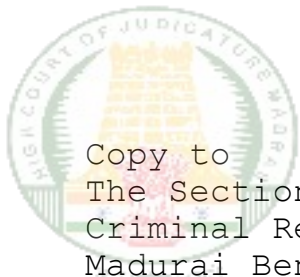
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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the 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 Inspector of Police,
Ambiligai Police Station,
Dindigul District.
- 2.The Additional District and Sessions Judge/
Fast Track Court, Dindigul
- 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 (2 copies)

+1 CC to M/s.V.CHANDRASEKAR, Advocate (SR-31313[F] dated 06/10/2021)

+1 CC to M/s.S.SIVA THILAKAR, Advocate (SR-31315[F] dated 06/10/2021)

JUDGMENT MADE IN
Cr1.A.(MD).No.551 of 2018
05.10.2021

SJ(CO)
TR(29.11.2021) 10P 8C