



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.10.2021

CORAM:

**THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN
and
THE HONOURABLE MRS.JUSTICE S.ANANTHI**

Crl.A. (MD) .No.552 of 2018

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

-vs-

1.The State of Tamil Nadu,
Represented by
The Deputy Superintendant of Police,
Melur Range,
Madurai District.

2.The Inspector of Police,
Melur Police Station,
Madurai District
(In Crime No.14 of 2007)

... Respondents /
Complainants 1 and 2

3.Mathankumar

4.Vimalkumar

5.Guru

... Respondent Nos.3 to 5 / Accused

PRAYER : Criminal Appeal is filed under Section 372 of Cr.P.C., to call for records in Judgment dated 10.02.2010 in Spl.S.C.No.140 of 2007, on the file of the learned III Additional District and Sessions Judge, (PCR), Madurai and set aside the same and allow the appeal against acquittal.

For Appellant : Mr.R.Alagumani

For R1 & R2 : Mr.A.Thiruvadikumar

Additional Public Prosecutor

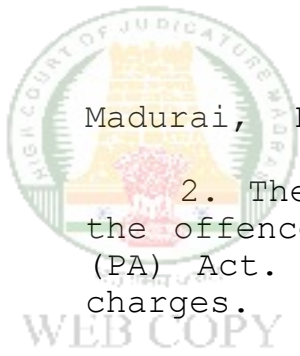
For R3 : Mr.V.Raghavachari

For R4 & R5 : Mr.S.C.Herold Singh

J U D G M E N T

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

Against the order of acquittal passed in Spl.S.C.No.140 of 2007 by the learned III Additional District and Sessions Judge (PCR),
<https://hseervices.courts.gov.in/hseervices/>



Madurai, P.W.1 is before this Court with this appeal.

2. There are totally three accused and they stood charged for the offences under Section 323 IPC., r/w. Section 3(2)(V) of SC/ST (PA) Act. The trial Court acquitted all the accused from all the charges.

3. The case of the prosecution is that the deceased one Malaisamy is the brother of P.W.1 and son of P.Ws.2 and 3. Both the accused and the deceased are belonged to same Village. A cricket match was conducted by the locals on 15.01.2007, in which, the ball hit P.W.6, which was questioned by the deceased. Consequent to that, on 17.07.2007, all the accused came to the house of deceased and P.W.1, and A1 and A2 attacked P.W.1 in the thigh, A2 attacked the deceased with cricket bat on his head. A1 and A3 attacked P.W.1, thereafter, they left the place. Both P.W.1 and the deceased were taken to Melur Government Hospital, after given first aid, they were referred to the Government Hospital, Madurai, where, the deceased succumbed to injuries on 19.01.2012. In the meantime, P.W.15, the Sub-Inspector of Police, Melur Police Station, on intimation from the Government Hospital, recorded the statement of P.W.1, based on that, he registered an FIR in Crime No.14 of 2007, for the offence under Sections 341, 323, 506(i) IPC., r/w. Section 3 (1)(x) of SC / ST Act, and sent the FIR to the Judicial Magistrate Court and also to P.W.17, the Deputy Superintendent of Police / Investigating Officer. P.W.17, on receipt of the information, rushed to the scene of occurrence, prepared observation mahazar, rough sketch and also recorded the statement of other witnesses. After the death of the deceased, he altered the FIR for the offence under Sections 341, 506(ii), 302 IPC., r/w Section 3(1)(x) and 3(2)(V) of Scheduled Caste / Scheduled Tribes (Prevention of Atrocities) Act, 1989. Thereafter, he conducted inquest on the dead body, in the presences of witnesses and sent the body for postmortem/autopsy. P.W.15, Doctor, working in the Government Rajajai Hospital, Madurai, conducted the postmortem on the dead body, given Ex.P12 / postmortem report and found the following injuries:-

"Appearances found at the postmortem

Moderately nourished body of a male, aged about 28 years. Finger and toe nails blue. Dried blood clots noted on right ear. Nil external injury noted on the body. On dissection of scalp, skull & dura: Contusion scalp 14 cms x 10 cms noted on right tempero occipital region. Fissure fracture 6 cms length noted on right tempero occipital bone. Right temporalis muscle is bruised. Subdural haematoma 6 x 4 x 1 cms noted over the right temporal lobe of brain. Laceration 4 x 1 x 1 cms noted over right temporal lobe of brain. Diffused subdural haemorrhage and subarachnoid haemorrhage noted with cerebral hemispheres. Fracture base of



skull is noted in right middle cranial fossa. Cerebrospinal fluid increased in volume and blood stained.

Other Findings:

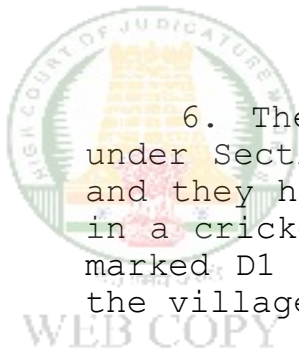
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Peritoneal & Pleural cavities - empty; Pericardium - contains 15 ml of strew coloured fluid; Heart - right side fluid blood, left side empty; Coronaries - patent: Lungs, liver, spleen & kidneys - cut section congested; Larynx & trachea - normal; Hyoid bone - intact; Stomach - contains 250 gms of partly digested cooked rice particles, no specific smell, mucosa normal; Small intestine - contains 20 ml of bile stained fluid, no specific smell, mucosa normal; Bladder - empty; Brain - described in injury column.

and he was of the opinion that the deceased would appear to have died of Cranio Cerebral injuries. P.W.17, continued the investigation, arrested the accused and after completion of investigation filed the final report.

4. Considering the above materials, the trial Court framed charges and accused denied the same. In order to prove the case, the prosecution examined 17 exhibits and 3 material objects.

5. Out of the witnesses examined, P.W.1, is the brother of the deceased, he is the injured eyewitness, who speaks about the earlier quarrel between the parties and according to him, on the date of occurrence, all the three accused went to the house of the deceased and attacked P.W.1 and the deceased; P.W.2 is the mother of the deceased, she is also eyewitness to the occurrence. According to her, all the accused came to the house of P.W.1, attacked P.W.1 and the deceased; P.W.3 is the father of the deceased, he is also an eyewitness to the occurrence; P.W.4 is the neighbour of the deceased, he turned hostile; P.W.5 also turned hostile; P.W.6 is the sister of the deceased, she speaks about the occurrence took place on 15.01.2007; P.W.7 is the hearsay witness, he admitted the deceased and P.W.1 in Melur Government Hospital; P.W.9 is the Tahsildar, given a community certificate both to the accused as well as the deceased; P.W.10 and P.W.11 turned hostile; P.W.12 identified the body for postmortem; P.W.13 is the Doctor, who given first aid to P.W.1 and the deceased and also given accident register Ex.P8 and Ex.9; P.W.14 admitted the deceased in Government Rajaji Hospital, Madurai; P.W.15 is the Sub-Inspector of Police, who said to have recorded the statement of P.W.1 in the Government Rajaji Hospital, Madurai; P.W.16 is the postmortem doctor; P.W.17 is the Investigating Officer, who conducted inquest and also after completing the investigation filed the final report.



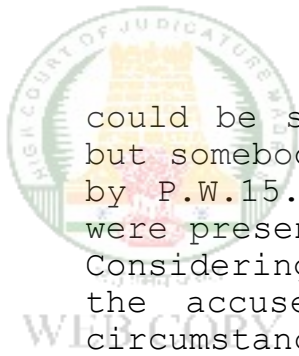
6. The above incriminating materials were put to the accused under Section 313 Cr.P.C., and the accused denied the same as false and they have examined D.W.1 to show that the occurrence took place in a cricket ground and not in front of the deceased house and also marked D1 / Poster to show that the cricket match was conducted in the village on the date of occurrence.

7. Considering those materials, the trial Court acquitted the accused mainly on the ground that there is a doubt about place of occurrence and the earlier intimation given to the police has been suppressed by the prosecution. Challenging the order of acquittal, P.W.1 is before this Court with this appeal.

8. We have heard the submissions Mr.R.Alagumani, the learned counsel appearing for the appellant, Mr.A.Thiruvadikumar, the learned Additional Public Prosecutor, appearing for R1 and R2, Mr.V.Raghavachari, the learned counsel appearing for R3 and Mr.S.C.Herold Singh, the learned counsel appearing for R4 and R5 and perused the records carefully.

9. P.W.1 is the injured witness. According to him, the occurrence had took place in front of their house, in which, all the three accused attacked the deceased and P.W.1. Thereafter, both P.W.1 and the deceased were taken to Government Hospital at Melur, after given First Aid, they referred to Government Rajaji Hospital, Madurai, where P.W.15 said to have recorded the statement of P.W.1 based on that, FIR has been registered. However, in the cross-examination, he stated that somebody has written the complaint and he has not given any statement. He further stated that the occurrence had taken place in the cricket ground from there, the deceased was taken in a public transport to the hospital. P.W.3 is the father of the deceased, in cross-examination he stated that on the way to Government Hospital, Melur, they went to the Melur Police Station, informed the Police and they have instructed him to take the injured persons to the hospital. That part, P.W.15, the Sub-Inspector of Police, who said to have registered the statement of P.W.1 in the Government Hospital, Madurai. In the cross-examination, he has stated that he only received the written complaint but, he is not aware, who has prepared the complaint. D.W.1, who was examined on behalf of the villagers, has stated that during the cricket match, there was a quarrel between the parties, in which, the deceased Malaichamy fell down and sustained injuries on his head.

10. Considering those materials the trial Court came to the conclusion that there is a doubt as to the scene of occurrence and held that the occurrence had taken place in the cricket ground and not in front of the house of the deceased, thereby, disbelieved the evidence of P.Ws.1 to 3. The trial Court also held that the earliest information given by P.W.1 before the respondent police has been suppressed. That apart, from the perusal of the records, it



could be seen that Ex.P1 complaint itself was not given by P.W.1, but somebody has prepared the complaint and that has been registered by P.W.15. P.W.1 also stated that persons from a political party were present in the hospital and somebody has written the complaint. Considering those circumstances, possibility of false implication of the accused also cannot be ruled out. Considering all those circumstances, the trial Court has acquitted all the accused.

11. Law is well settled, that, in 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."

12. 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.

13. 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/-

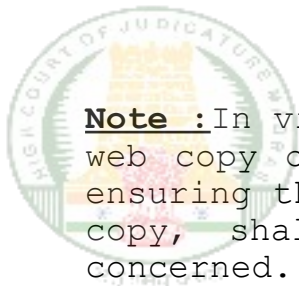
Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)

MPK



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To

- 1.The Principal District Judge, Madurai.
2. The III Additional District and Sessions Judge, (PCR),
Madurai
- 3.The Deputy Superintendant of Police,
Melur Range,
Madurai District.
- 4.The Inspector of Police,
Melur Police Station,
Madurai District
- 5.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.S.C.HEROLD SINGH, Advocate (SR-32034[F] dated 20/10/2021)

+1 CC to M/s.DR.R.ALAGUMANI, Advocate (SR-32164[F] dated 21/10/2021)

+1 CC to M/s.V. RAGHAVACHARI, Advocate (SR-32044[F] dated 20/10/2021)

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20.10.2021

_RD(26.11.2021) 9P 11C