



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.554 of 2018

R.Eswaran ... Petitioner/P.W.2

-VS-

1.State rep. by
The Inspector of Police,
Saminathapuram Police Station,
Cr.No.66 of 2009,
Dindigul District. ... 1st respondent/Complainant

2.Senthilkumar ... 2nd respondent/Accused

PRAYER:Criminal Appeal filed under Section 372 of the Code of Criminal Procedure against the judgment passed by the Principal Sessions Court, Dindigul, Dindigul District in S.C.No.160 of 2009 dated 09.04.2010.

For Appellant	: Mr.Mahaboob Athiff Legal Aid Counsel
For R-1	: Mr.A.Thiruvadikumar, Additional Public Prosecutor
For R-2	: Mr.Jerin Mathew, Legal Aid Counsel

JUDGMENT

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

This appeal has been preferred against the order of acquittal passed by the Principal Sessions Court, Dindigul, Dindigul District in S.C.No.160 of 2009, dated 09.04.2010. The sole accused/second respondent herein stood charged for an offence under Section 302 I.P.C. The trial Court acquitted the accused. Now, challenging the order of acquittal, this appeal has been filed by the appellant/P.W.2, the father of the deceased.



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

The deceased one Radha @ Balamani is the wife of the accused. Suspecting that she was having illicit intimacy with one Vivek, there were frequent quarrels between the husband and wife. On 12.04.2009, at about 9.15 a.m., the accused cut the deceased with a Bill Hook and severed her head and placed the head in the house of P.W.4, who is the friend of the deceased and left. Thereafter, he surrendered before P.W.7, Village Administrative Officer of Midapatti and has given extra judicial confession admitting his guilt and he was produced before P.W.16, the Sub-Inspector of Police working in the respondent police station, along with a complaint, based on that he registered the F.I.R(Ex.P13) in Crime No.66 of 2009 for the offence under Section 302 I.P.C. P.W.18, the Inspector of Police working in the respondent police station, commenced the investigation and proceeded to the scene of occurrence, where he prepared the Observation Mahazar(Ex.P2) and Rough Sketch(Ex.P16). Since the head of the deceased was severed, he conducted inquest on the Trunk and prepared the inquest report (Ex.P17), then he collected the bloodstained cement floor and ordinary cement floor from the scene of occurrence. Then, the head of the deceased was brought and joined with the Trunk, thereafter, he conducted another inquest on the dead body and prepared the inquest report(Ex.P19) and sent the body for postmortem autopsy. P.W.10, a Doctor working in the Government Hospital, Palani, has conducted postmortem autopsy on the dead body and given a postmortem certificate(Ex.P8) and found the following injuries:

"Trunk:presented separately I out head which is cut at the level of C4-C5 Cervical Vertebra. Major Vessels are cut. Soft tissues are severed. All internal organs were pale. Heart Chambers empty. Hyoid intact. Stomach contains 200 ml of undigested food particles uterus empty.

Head: Cut at the level of C3 - C4 major vessels are cut.

(1) A lacerated injury of 10 X 5 cm X BD over the (LL) occipital regim of scalp.

(2) A lacerated injury of 10 X 5 X 2 cms over the (RL) posterior auricular regim of scalp.

(3) A lacerated injury of 5 X 3 X 2 cms over the midline over the back just above the cut end.

Skull and membrane intact. Brain pale."

He was of the opinion that the deceased would appear to have died of shock and internal hemorrhage due to the injuries sustained.



3. P.W.18, continued the investigation and recorded the statement of other witnesses and on completion of investigation, filed the final report.

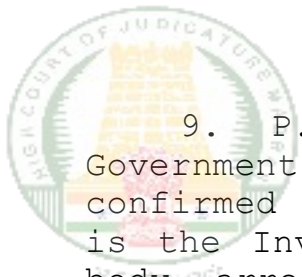
4. Considering the above materials, the trial Court framed the charge and the accused denied the same as false. In order to prove its case, the prosecution examined as many as 19 witnesses, marked 19 documents and also produced 19 material objects.

5. Out of the witnesses examined, P.W.1, a neighbour of the deceased is an eyewitness to the occurrence, but he turned hostile. P.W.2 is the father of the deceased. He spoke about the earlier quarrel between the deceased and the accused. According to him, after the occurrence, he saw the accused carrying the severed head in a two-wheeler.

6. P.W.3, is the mother of the deceased. She spoke about the earlier quarrel between the husband and wife. P.W.4, is the father of P.W.6, who is the friend of the deceased and both studied together in a tutorial college. According to P.W.4, after the occurrence, the accused took the severed head of the deceased and placed it in their house and thereafter, the police had taken the head.

7. P.W.5 is the wife of P.W.4 and P.W.6 is the daughter of P.W.4 and they reiterated the evidence of P.W.4. P.W.7, is the Village Administrative Officer of Midapatti Village, before whom, the accused has appeared and given extra judicial confession. P.W.8 is the witness to the recovery of material objects. P.W.9, is the neighbour of P.Ws.4 to 6. According to him, after hearing the noise from the house of P.W.4, he went there and saw the head and he caught hold of the accused and handed over to the police. He is also a witness to the recovery of blood stained saree of P.W.5.

8. P.W.10, a Doctor working in the Government Hospital, Palani, has conducted postmortem autopsy on the dead body and given a Postmortem Certificate (Ex.P8). P.W.11, is an Assistant Director working in the Forensic Laboratory, Madurai. He has examined the bloodstained material objects and given reports Exs.P10 and P11. P.W.12, is the person running a Tutorial College, where the deceased and P.W.6 studied. P.W.13 is the photographer, who had taken photographs of the dead body. P.W.14 is the Head Constable, who handed over the F.I.R., to the Court. P.W.15, is the Head Constable, who identified the dead body for postmortem. P.W.16, the Sub-Inspector of Police working in the respondent police station, registered the F.I.R.



9. P.W.17, is the Assistant Professor working in the Government Medical College Hospital, Madurai. He has examined and confirmed that the Cervical bone is that of the deceased. P.W.18, is the Investigating Officer, who conducted inquest on the dead body, arrested the accused and recorded the statement of witnesses and on completion of investigation, filed the final report.

10. The above incriminating materials were put to the accused under Section 313 Cr.P.C., and the accused denied the same as false. On his side, he has not examined any witnesses and marked any documents.

11. Having considered the materials available on record, the trial Court acquitted the accused. Challenging the order of acquittal, P.W.2, father of the deceased is before this Court with this Criminal Appeal.

12. We have considered the submissions of Mr.Mahaboob Athiff, learned counsel appearing for the appellant, Mr.A.Thiruvadikumar, learned Additional Public Prosecutor appearing for the State and Mr.Jerin Mathew, learned counsel appearing for the second respondent.

13. The sole eye-witness - P.W.1, turned hostile. The other witnesses namely P.Ws.2 to 6, said to have seen the accused carrying the severed head in a two-wheeler and threw it in the house of P.Ws.4 to 6. However, the trial Court disbelieved their evidence on the ground that there is lot of discrepancies regarding the time of placing the head and also recovery of the same by the respondent police. That apart, P.W.9, who is the neighbour of P.Ws.4 to 6, has stated that he only caught hold of the accused and handed over the same to the police. However, according to P.W.7, Village Administrative Officer of Midapatti Village, the accused appeared before him at about 12.00 p.m., on 12.04.2009 and has given extra judicial confession. Based on that, he produced the accused before P.W.16. So far as recovery of head is concerned, there is no clear evidence, at what time the head was recovered from the house of P.Ws.4 to 6. Admittedly, the head was not recovered under any mahazar. It was also admitted by P.W.18, Investigating Officer, that he did not know, who had recovered the head from the house of P.Ws.4 to 6 and how the head was taken to the original scene of occurrence.

14. Considering these all those circumstances, the trial Court has come to the conclusion that the prosecution has failed to prove the charge beyond any reasonable doubt and acquitted the accused.



15. Law is well settled, that, in the appeal against acquittal, the order of acquittal should not be lightly interfered with by the appellate Court unless there is omission or perverse in the finding of the trial Court. The appellate Court should not ordinarily set aside the order of acquittal in a case where two views are possible, though the view of the appellate Court may be the more probable one. It is also settled law that in a case of appeal against acquittal, there is a double presumption in favour of the accused. The presumption of innocence was further confirmed by the order of acquittal. 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."

16. Keeping the above principle in mind, we have considered all those materials and circumstances and find no irregularity or illegality in the order of acquittal passed by the trial Court.

17. 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.

18. Before parting with the case, we record our appreciation for the excellent assistance rendered by Mr. Mahaboob Athiff,
<https://hcservices.ecourts.gov.in/hcservices/>



learned counsel for the appellant and Mr.Jerin Mathew, learned counsel for the second respondent, who have been appointed as legal aid counsels. The Legal Services Authority attached to this Bench, shall pay necessary fees to the learned counsels.

Sd/-

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Assistant Registrar (CO)

// 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 Principal Sessions Judge,
Dindigul District,Dindigul.
- 2.The Inspector of Police,
Saminathapuram Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,Madurai.

Copy to

- 1.The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.
- 2.The Secretary,
Legal Aid Services Authority,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.M.JERIN MATHEW, Advocate (SR-32178[F] dated 21/10/2021)

Criminal Appeal No.(MD) No.554 of 2018
20.10.2021

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