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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:21.10.2021

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THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

CRL.A (MD)No.553 of 2018

P.Sankara Pandian

... Appellant/P.W.1

-vs-

1.The State represented by,
The Inspector of Police,
Kayathar Police Station,
Thoothukudi District.
(Crime No.150 of 2011)

...Respondent/Complainant

2.Muthu Pandi

...Respondent/Accused

Criminal Appeal filed under Section 372 r/w 401 of the Code of Criminal Procedure against the acquittal judgment passed by the learned Additional Sessions Judge(Fast Track Court No.I), Thoothukudi, Thoothukudi District in S.C.No.244 of 2011, dated 06.03.2012.

For Appellant

:Mr.R.Anand

For R-1

:Mr.A.Thiruvadikumar,
Additional Public Prosecutor

For R-2

:Mr.V.Kathirvelu,
Senior Counsel for
Mr.K.Prabhu

JUDGMENT

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

Against the order of acquittal passed by the learned Additional Sessions Judge(Fast Track Court No.I), Thoothukudi, Thoothukudi District in S.C.No.244 of 2011, dated 06.03.2021, P.W.1 is before this Court. The second respondent herein is the sole accused. He stood charged for the offence under Sections 302 and 316 I.P.C. The trial Court after full-fledged trial, acquitted the accused from both the charges. Challenging the order of acquittal, this appeal has been filed.

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

The deceased one Karpagam is the knife of the accused. The marriage took place six months prior to the occurrence. Right from



the marriage, the accused harassed the deceased for various reasons. On 06.05.2011, at about 1.45 p.m., the accused with an intention to cause the death of the deceased, strangled her with nylon rope. Thereafter, he cut her neck with wife and caused her death. At the time of occurrence, the deceased was pregnant and the child also died in the womb and thereby, the accused caused the death of the child. P.W.2, a minor sister of the accused, who was present at the time of occurrence, informed the same to P.W.1, who is the brother-in-law of the deceased. Immediately, they rushed to the house of the accused, where they found the deceased dead. Immediately, P.W.1, has given a complaint before the respondent police at about 4.00 p.m. P.W.12, the Sub-Inspector of Police, on receipt of the complaint, registered the F.I.R(Ex.P.14) in Crime No.150 of 2011 for an offence under Section 302 I.P.C., and sent the same to the Judicial Magistrate Court and also sent the copies to the Inspector of Police and other higher officials.

3. P.W.13, the Inspector of Police working in the respondent police station on receipt of the F.I.R., commenced the investigation and rushed to scene of occurrence. He prepared the Observation Mahazar (Ex.P2) and Rough Sketch(Ex.P15) and also recovered a bed sheet (M.O.1), nylon rope (M.O.2), bloodstained cement (M.O.4), Sample Cement(M.O.5). On the spot, he conducted inquest on the dead body in the presence of witnesses and prepared inquest report(Ex.P16). On 09.05.2011, he arrested the accused and based on his confession, recovered bloodstained Lungi(M.O.7) and bloodstained shirt(M.O.6). In the meantime, P.W.9, a Doctor working at Government Hospital, Kovilpatti, conducted postmortem autopsy on the dead body and issued a postmortem report(Ex.P.11) and found the following injuries:

"External injuries:

1.Ligature mark 30cm X 1cm surrounding entire neck, except 4cm below left ear.

2.12cm X 6cm bone depth cut injury in neck.

3.Trachea, Oesophagus severed; eyelids-closed, mouth and lips normal, tongue within the mouth, 8,8,8 and 8 teeth,

Internal examination:

opening of thorax: ribs normal, heart pale, lungs pale,

Hyoid Bone: Intact.

Opening of Abdomen: Stomach contains 100gm of undigested food particles. Liver, Spleen + both kidneys are pale. Small Intestine empty. Large



Intestine disheveled, Gall Bladder empty.

Uterus: size 26cm, weight 950gm, 35cm fetus mesent-male fetus, 5 month baby, head circumference 26cm, placenta attached in the posterior wall, weight 250gm.

Opening of Head: Skull no fracture, membranes intact, Brain pale"

and he was of the opinion that the deceased would appear to have died of Shock of Hemorrhage due to injuries sustained. P.W.13, recorded the statement of witnesses and after completing the investigation, filed the final report.

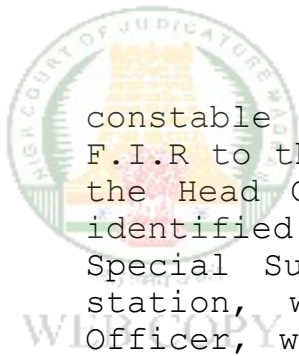
4. Considering the above materials, the trial Court framed charges and the accused denied the same as false. In order to prove its case, the prosecution examined as many as 13 witnesses, marked 16 documents and also produced 8 material objects.

5. Among the witnesses examined, P.W.1 is the brother-in-law of the deceased. According to him, after the occurrence, P.W.2 informed him and he has lodged the complaint before the respondent police.

6. P.W.2, is a minor sister of the accused. According to her, on the date of occurrence, she came back to the house at 4.00 p.m., along with her sister and found the deceased dead and she does not know, who has caused the murder, immediately, she informed the same to her aunt. P.W.3, is the mother of the deceased. She spoke about the earlier quarrel between the accused and the deceased. P.W.4 is the neighbour of the deceased. According to him, at about 2.00 p.m., there was a quarrel in the house of the accused, at that time, P.W.2 and her sister raised alarm and after five minutes, the accused came out of the house with bloodstained lungi and shirt and thereafter, he along with P.W.1 went inside the house of the accused and found the deceased dead.

7. P.W.5, is the witness to the Observation Mahazar, Rough Sketch and recovery of material objects. P.W.6, the Village Administrative Officer of Kayathar village, is the witness to the arrest of the accused and recovery of bloodstained lungi(M.O.7) and shirt(M.O.6). P.W.7, is the Head Clerk working in the Judicial Magistrate Court No.II, Kovilpatti. He received the material objects and sent the same for chemical examination.

8. P.W.8, is the Assistant Director working in the Forensic laboratory, Tirunelveli. He has examined the bloodstained material objects and filed the serology report. P.W.9, a Doctor working at Government Hospital, Kovilpatti, conducted postmortem autopsy on the dead body and issued a postmortem report(Ex.P.11). P.W.10, is the



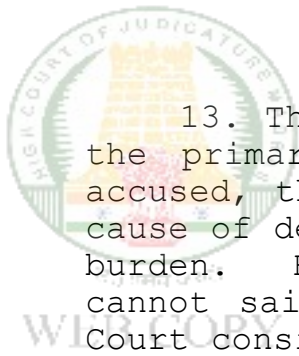
constable working in the respondent police station. He sent the F.I.R to the Judicial Magistrate Court No.II, Kovilpatti. P.W.11, is the Head Constable working in the respondent police station. He identified the dead body for postmortem autopsy. P.W.12, is the Special Sub-Inspector of Police working in the respondent police station, who registered the F.I.R. P.W.13 is the Investigating Officer, who conducted the investigation, arrested the accused and filed the final report.

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

10. Considering those materials, the trial Court acquitted the accused on the ground that there is no material available on record to connect the accused with the murder. P.W.2, who said to be the eyewitness to the occurrence also did not support the case of the prosecution and the evidence of P.W.4, who said to have seen the accused coming out of the house also cannot be believed in view of the evidence of P.W.2 and holding so, the trial Court acquitted the accused. Now, challenging the same, the present appeal has been filed.

11. Mr.R.Anand, the learned counsel appearing for the appellant would vehemently contend that P.W.2, sister of the accused, has supported the case of the prosecution but, the trial Court failed to consider the same. According to the learned counsel, the occurrence had taken place inside the house of the deceased and after the occurrence, P.W.4, who is the neighbour of the accused saw the accused running out of the house with bloodstained dress. Since the occurrence took place inside the house, the accused being the husband must have special knowledge about the occurrence but, there is no proper explanation from him. It is a strong circumstance against the accused but, that was not considered by the trial Court. So far as motive is concerned, the evidence of P.Ws.1 and 3, clearly shows that the accused harassed the deceased right from the marriage and finally, caused her death. That circumstance also not properly considered by the trial Court. That apart, the medical evidence clearly proved that it is a case of homicidal death and the serology report also supports the case of the prosecution. The trial Court omitted to consider all those materials and acquitted the accused. Hence, the acquittal is necessarily to be reversed.

12. Per contra, Mr.V.Kathirvelu, learned Senior Counsel appearing of the second respondent/accused would contend that the one and only eyewitness P.W.2, did not support the case of the prosecution. The evidence of P.W.4 cannot be relied upon as the other evidence available totally contradict the evidence of P.W.4. The trial Court disbelieved his evidence by giving valid reasons. Apart from that, there is no other materials available on record to



13. The learned Senior Counsel would further contend that it is the primary duty of the prosecution to prove the guilt of the accused, then only, the burden shifts on the accused to explain the cause of death. The prosecution has failed to discharge its initial burden. Hence, the non explanation on the side of the accused, cannot said to be a circumstance against the accused. The trial Court considering all those circumstances, has rightly acquitted the accused and there is no reason to interfere with the same.

14. We have heard the learned Additional Public Prosecutor appearing for the State and also considered the materials available on record.

15. The one and only eyewitness available in this case is P.W.2, who is the minor sister of the accused. However, she did not support the case of the prosecution. But, she was not treated as hostile. Witness. According to her, she came back from school at 4.00 p.m., along with her sister and found the deceased dead and has not seen the accused in the house at that time. Thereafter, she informed the same to her aunt. In cross-examination, she has stated that only at about 6.00 p.m., she came to know about the death of the deceased. The next evidence is P.W.4, who said to have seen the accused coming out of the house after the occurrence. According to him, on 06.05.2011 at about 2.00 p.m., there was a quarrel between the deceased and the accused and both P.W.2 and her sister raised alarm. At that time, P.W.4 and one Pandi were standing outside the house. After five minutes, the accused came out of the house with a bloodstained lungi and shirt. At that time, P.W.1 and one Ammapondur, came there and all of them went inside the house of the accused and found the deceased dead, but his evidence is contrary to the evidence of P.W.2 as she was not present at the time of occurrence and one Pandi, who said to be present along with P.W.4 was also not examined. The next evidence is P.W.1, who is the brother-in-law of the deceased, who said to have come to the occurrence place after he was informed by P.W.2. According to him, after the occurrence, P.W.2 came to his house and informed about the occurrence and thereafter, he went to the scene of occurrence. His evidence also cannot be believed for the simple reason that there is no occasion for P.W.2 to inform him about the occurrence. That apart, there is no other evidence available on record to connect the accused with the death.

16. So far as the contention of the learned counsel appearing for the appellant regarding absence of explanation by the accused as to the cause of death, it is settled law that Section 106 of the Evidence Act, cannot be applied directly against the accused. The initial burden is on the prosecution to establish the *prima facie* case against the accused. Only thereafter, the burden shifts on the accused. In the instant case, the prosecution has failed to discharge its initial burden. In the said circumstances, failure to



Considering all those circumstances, the trial Court has acquitted the accused.

17. 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 order 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;

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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."

18. Keeping the above principle in mind, we have considered the judgment of the trial Court, and we find no irregularity or illegality in the order of acquittal passed by the trial Court.

19. 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.

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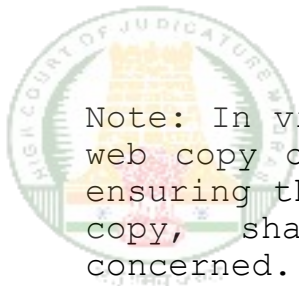
Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)

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- 1.The Additional Sessions Judge
(Fast Track Court No.I),
Thoothukudi, Thoothukudi District.
 - 2.The Inspector of Police,
Kayathar Police Station,
Thoothukudi District.
 - 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.K.PRABHU, Advocate (SR-32223[F] dated 22/10/2021)

Judgment in
Criminal Appeal No.(MD) No.553 of 2018
21.10.2021

KS (CO)
GC(08.12.2021) 10P 7C