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Cr1.A.(MD).No.555 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Cr1.A.(MD).No.555 of 2018

A.S.Ushadevi ... Appellant /defacto complainant

-vs-

1.Venkatesh

2.P.R.Balan @ Balasubramanian

3.Sundaragopala Iyer ... Respondents/ Accused 1 to 3

4.The Inspector of Police  
State of Tamilnadu,  
Theppakulam Police Station,  
Madurai District. ...Respondent/complainant  
(Crime No.799/2009)

**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.392/2010, dated 12.03.2012 on the file of the Additional Sessions Judge/Fast Track Court No.1, Madurai and setaside the same and allow the appeal and convict the respondents/accused 1 to 3 for the charges framed against them.

For Appellant : Mr.R.Ventakeshwaran  
For R1 & R2 : Mr.A.K.Alagarsamy  
For R3 : Died  
For R4 : Mr.S.Ravi  
Additional Public Prosecutor

### **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-Ushadevi, is before this Court with this appeal.

2. Totally there are three accused in this case. They stood charged for the offence under Section 302 r/w 201 r/w 34 I.P.C. By  
<https://hcservices.ecourts.gov.in/hcservices/>



judgement, dated 12.03.2012, 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 as follows:

The deceased, in this case one K.S.Subramanian, is the son of A3. A1 & A2 are the sister's husband and son of the deceased. There was a dispute between the parties in sharing a ancestral property and all the accused have decided to murder the deceased in order to grab the property. On 05.06.2009, all the accused went to the house of the deceased and A1 pushed the deceased against the Wall, thereafter, strangulated him and hanged him in the bed room as if he had committed suicide.

4. P.W.1 is the wife of the deceased. She was working as a teacher. On the date of occurrence, she went to school and came back at 5.30 p.m., along with her eldest son P.W.1 and found the door was locked. They forcefully opened the door and found the deceased hanging. Immediately, she gave a complaint (Ex.P1) before P.W.15 the Sub-Inspector of Police and he registered a case in Cr.No.799 of 2009 under Section 174 of Cr.P.C. The printed FIR was marked as Ex.P8. Immediately, after registration of the case, he along with one Anand, Head Constable, visited the scene of occurrence and in the presence of witnesses P.W.8, Karthik, and one Raja, prepared an Observation Mahazar (Ex.P2). He drawn the Rough Sketch (Ex.P9) and he recovered the material objects M.Os.1 & 2 in the presence of same witnesses. Thereafter, in the presence of Panchayatars he conducted an inquest on the dead body and prepared Inquest Report (Ex.P10), then sent the dead body to the Government Hospital for conducting postmortem through P.W.14-Head Constable and recorded the statements of the witnesses.

5. P.W.10- Dr.P.Natarajan, Professor, working in the Medical College Hospital conducted autopsy on the dead body and issued Accident Register (Ex.P4) and Postmortem Certificate (Ex.P5). He found following injuries on the dead body:

*" Appearances found at the postmortem:*

*Moderately nourished body of a male, aged about 46 years. Finger and toe nails nlue.*

*The following antemortem injuries are noted on the body:*

*Transverse ligature mark completely encircling the neck measuring 43cms x 2.0 cms.*

*The anatomical location of the ligature mark is as follows:*

- 07 cms below the right mastoid*
- 07 cms below the left mastoid*
- 07 cms below the centre of the chin.*

*On bloodless dissection of the neck:*



The base of the ligature mark is contused with extravasation of blood noted on the superficial and deeper planes of the neck. The underlying neck structures like thyroid cricoid cartilages, tracheal rings and hyoid bone are normal.

On dissection of scalp, skull & dura:

Contusion of scalp 8x4 cms noted on left parieto temporal region. Left temporalis muscle is bruised. Diffused subdural haemorrhage, subaachnoid heamorrhage noted over both cerebral hemispheres.

Note:

Multiple superficial surface incisions made all over the body reveals nil other injuries.

OTHER FINDINGS:

Peritoneal cavity - empty; Pleural cavity - empty; Pericardium - contains 15 ml of straw colour fluid; Heart - right side fluid blood, left side empty; Coronaries - Patent; Lungs - cut section congested; Larynx & trachea - normal, Hyoid bone - intact; Stomach - contains 150 gms of partly digested cooked food materials, nil specific smell, mucosa normal;

Liver, Spleen & Kidneys - cut section congested; Small intestine - contains 20 ml of bile stained fluid, nil specific smell. Mucosa normal; Bladder - empty; Brain - described.

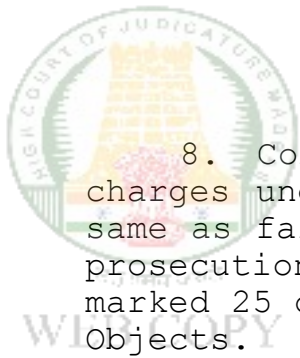
FINAL OPTION:

The deceased would appear to have died of Asphyxia due to ligature strangulation with head injury, 18-22 hours prior to autopsy.

He was given an opinion that the deceased would appear to have died of Asphyxia due to ligature strangulation with head injury.

6. P.W.15-Murugan, Sub-Inspector of Police continued the investigation and recorded the statement of witnesses and based on their statements and also the statement given by the Postmortem doctor, altered FIR into 302 of IPC. He sent the alteration report, and materials objects to the learned Judicial Magistrate No.I, Madurai. Thereafter, he handed over the case records to P.W.26-Inspector of Police.

7. P.W.26 Inspector of Police, Theppakulam Police Station, took up the same for further investigation. He continued the investigation and arrested the accused. On such arrest, A1, voluntarily gave a confession statement. Based on the admissible portion of the confession statement, he had recovered the material objects. Thereafter, he recorded the statement of the other witnesses including the Doctor, who conducted postmortem. After completing the investigation, on 30.11.2009, he filed the final report before the learned Judicial Magistrate No.I, Madurai, for the offence under Sections 302 of IPC.



8. Considering the above materials, the trial Court framed charges under Section 302 r/w 34 of IPC and the accused denied the same as false and opted for trial. In order to prove its case, the prosecution examined as many as 26 witnesses as P.W.1 to P.W.26, marked 25 documents as Ex.P1 to Ex.P.25 and also produced 4 Material Objects.

9. Out of the witnesses examined, P.W.1 is the wife of the deceased. She was working as a Teacher. She deposed that there was some property in the family. She further deposed that on 04.06.2009 her sister-in-law's second daughter's marriage took place and on that day she enquired about the property dispute to the deceased, but the deceased requested her not to interfere in the property dispute. On the date of occurrence, she returned from the School to the house at 05.30 p.m., the deceased chappal was found outside of the house and the door was locked. P.W.1 and her eldest son knocked the door forcibly and opened door and seen that her husband was hanging in a yellow nylon rope. P.W.1 reported the matter to the police. P.W.2 is the eldest son of the deceased. He accompanied with the P.W.1 and he corroborated the version of P.W.1. P.W.3 is the another son of the deceased and he deposed that he has seen the accused No.3 enter into the house of the deceased, later he came to know that his father died.

10. P.W.4 is the house owner of P.W.1, her evidence has no substance. P.W.5 is the neighbour of P.W.1. He arrived in the scene of occurrence after hearing the noise from P.W.1. P.W.6 cited as a witness for last scene theory, he was treated as hostile. P.W.7 is a teacher in Sowrastra School, he was treated as hostile. P.W.8 speaks about the preparation of mahazar. P.W.9 is the doctor working in Government Rajaji Hospital, Madurai. He declared that the deceased died and sent the body to the mortuary.

11. P.W.10 conducted postmortem autopsy and issued postmortem certificate Ex.P5. His final opinion was marked as Ex.P6. P.W.11, is a co-teacher, and he was told that the deceased had committed suicide by hanging. P.W.12 is the brother of P.W.1. He heard the news over phone from P.W.1, requested him to come to the house for taking the deceased to hospital. P.W.12 has gone to the deceased house and instructed P.W.1 to report the matter to the police that the deceased committed suicide by hanging due to stomach ache.

12. P.W.13 is working as a Headmaster in the Sowrastra Higher Secondary School. He has placed the copy of the attendants register. P.W.14 the Grade-I constable, who has handed over the dead body to the doctor for postmortem. After the postmortem, he has handed over the body to the relatives. P.W.15 is the Sub-Inspector Police, who has registered a case. He is the first investigating officer, and examined some of the witnesses and



13. P.W.16, P.W.17, P.W.18, P.W.19, P.W.20, P.W.21 were treated as hostile witnesses. P.W.22 speaks about the motive in this case and he is working as a statistical Inspector, the deceased is his sister's husband. P.W.23 is a hearsay witness. P.W.24 treated as hostile. P.W.25 is working as a Head-clerk in the Sowrastra Higher Secondary School. He deposed that one day prior to the occurrence the deceased applied for leave. On the date of occurrence, the deceased availed half day leave in the afternoon session. P.W.26 is the Inspector of Police, who has conducted the investigation, altered the FIR and examined the witnesses and laid the charge-sheet.

14. 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.

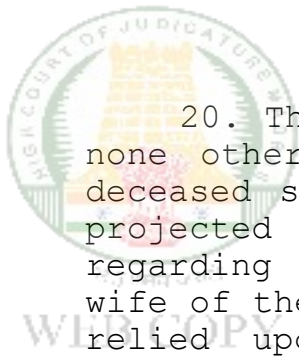
15. Having considered all the above materials, the trial Court found the accused not guilty for the offence under Section 302 r/w 201 r/2 34 of IPC and ultimately, acquitted the accused from all charges.

16. We have heard Mr.R.Venkateswaran, learned counsel appearing for the appellant, Mr.A.K.Alagarsamy, learned counsel appearing for the respondents 1 & 2 and Mr.S.Ravi, learned Additional Public Prosecutor appearing for the fourth respondent. We have also perused the records carefully.

17. The learned counsel appearing for the appellant would submit that the evidence of P.W.15, who speaks about the extra judicial confession given by A3 to P.W.16 was not disputed by the accused during the cross-examination. The trial court ought not to have disbelieved the evidence of prosecution witnesses. The learned trial Court without considering the evidences in a proper perspective, came to the conclusion that the prosecution has not proved their case beyond reasonable doubt.

18. Per contra, the learned counsel appearing for the accused/respondents 1 to 3 would contend that the extra judicial confession given by A3 to P.W.16 was not proved as P.W.16 turned hostile. The trial Court, considering all these aspects, has rightly come to the conclusion that before the occurrence the deceased was suffering from stomach ailment and took self medicines and due to that ailment, he ought to have committed suicide. The trial Court considering entire materials rightly acquitted the accused.

19. Heard the learned Additional Public Prosecutor appearing for the fourth respondent. We have considered the rival submissions made by the learned counsel appearing on either side.



20. This is a case of circumstantial evidence. The deceased is none other than the son of A3. The accused Nos.1 & 2 are the deceased sister's husband and son. The motive for the occurrence projected by the prosecution is that there was a civil dispute regarding sharing of house property at Madurai. P.W.1, who is the wife of the deceased, speaks about the motive. The main circumstance relied upon by the prosecution is the last seen theory. To substantiate the same, they have examined P.W.3 son of the P.W.1 and the deceased. According to P.W.3, on the date of occurrence, he was playing in the opposite house. In the afternoon, the deceased came and took him home for lunch. Afterwards the deceased left the house stating that he will return home in the night and his brother will be brought by his mother. Then P.W.3 gone to the nearby house. After some time, he went to his grand-father, A3's house, at that time A3 was not there and he slept there. Thereafter, he was informed that his father died.

21. From a careful perusal of his evidence, it is seen that, after the lunch, the deceased left the house, and PW.3 only seen A3, came to his house, after that P.W.3 did not see the accused along with the deceased before the occurrence. Apart from that, two more witnesses P.Ws.6 & 7, who are the neighbours, were examined in respect to the last seen theory, were turned hostile, and the prosecution has failed to prove the last seen theory.

22. The next circumstances relied upon by the prosecution is recovery of material objects viz., P.Ws.20 & 21 and mahazar witness, and they were also turned hostile. Further, the Extra Judicial Confession said to have given by A3 to P.W.16, who is a close relative of deceased, he has also turned hostile. It is a settled law that the extra judicial confession is a very weak piece of evidence, unless the other circumstances corroborates the same, the conviction cannot be sustained, based on the extra judicial confession. These are all the circumstances relied upon the prosecution and the prosecution has failed to prove none of the circumstances beyond reasonable doubts pointing out the guilt of the accused.

23. 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...."

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."

24. 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.

25. 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)

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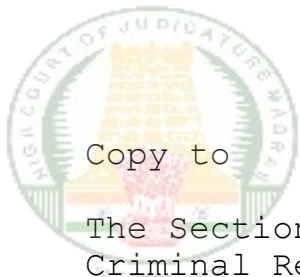
Sub Assistant Registrar(CS)

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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 Additional Sessions Judge/  
Fast Track Court No.1, Madurai.
- 2.The Inspector of Police  
Theppakulam Police Station,  
Madurai 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)

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**30.09.2021**

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