



Crl.A(MD)No.447 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.12.2022

CORAM

**THE HON'BLE DR JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR JUSTICE SUNDER MOHAN**

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Chandra

.. Appellant/P.W.1

Vs.

**1.State rep by
The Inspector of Police,
Eruvadi Police Station,
Tirunelveli District.
(Crime No.156 of 2012)**

**2.Sathish
3.Suresh
4.Narayana Selvam
5.Mathish
6.Venkatesh
7.Jawahar babu**

**.. Respondents 2 to 7/Accused
1 to 6**

**Appeal filed under Section 372 of the Code of Criminal Procedure,
against the judgment dated 20.08.2019 passed by the I Addl. Sessions Court,
Tirunelveli, in S.C.No.272 of 2013.**

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For Appellant :Mr.V.Kathirvelu, Senior Counsel
for Mr.P.Subbaiah

For R1 :Mr.A.Thiruvadikumar
Additional Public Prosecutor

For R2 to R7 :Mr.R.Anand

JUDGMENT

DR G.JAYACHANDRAN,J.
and
SUNDER MOHAN,J.

The appeal against acquittal is preferred by P.W.1, who is the maternal aunty of the deceased and also the first informant being the witness to the occurrence. Aggrieved by the order of acquittal by the trial Court, she has preferred the appeal against acquittal.

2.The accused, who has gained acquittal by the trial Court, has engaged a counsel and contested the appeal on multiple grounds with a preliminary objection that the appeal is not maintainable, since it is not preferred by the victim or his legal representative to satisfy Section 2(wa) of the Code of Criminal Procedure.



3. In view of the preliminary objection is raised, this Court is bound to answer the objections before proceeding further. Section 378 Cr.P.C., provides right of appeal in case of acquittal, the victims also to prefer appeal against acquittal, after amendments to the Code by the Central Act, 25 of 2005 and Act 5 of 2009 with effect from 23.06.2006 and 31.12.2009, respectively. The relevant provisions are extracted below for sake of convenience.

“378. Appeal in case of acquittal.-(1) Save as otherwise provided in sub- section (2) and subject to the provisions of sub- sections (3) and (5),-

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court² or an order of acquittal passed by the Court of Session in revision.]

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special



Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal-

(a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause(a)] or an order of acquittal passed by the Court of Session in revision]

(3) No appeal under sub- section (1) or sub- section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub- section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If in any case, the application under sub- section (4) for the grant of special leave to appeal from an order of acquittal is



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refused, no appeal from that order of acquittal shall lie under sub- section (1) or under sub- section (2).”

Thereafter, further amendment was carried out in the Code, by amending Section 372 Cr.P.C., and inserting Section 2(wa) to the Code.

“372. No appeal to lie, unless otherwise provided. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or any other law for the time being in force.

[Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court]”

As per these amendments, the victim being conferred with right to prefer an appeal against acquittal and the term victim being defined under Section 2(wa) in the following words.

“2(wa) “victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir;”



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3. According to the learned counsel for the respondents 2 to 7/accused, the appellant, who is the maternal aunty of the deceased, will not fall within the ambit of the definition “victim”, since she is not the legal heir of the deceased. We are not able to countenance this submission because the said definition is not restricted to victim itself. In the said definition, the expression victim is a person who suffered only loss or injury and includes his or her guardian or legal heir. Thus the term victim does not confine to the deceased alone, but any person who has suffered any loss or injury caused by reason of the act or omission for which, the accused person has been charged.

4. The First Information Report was registered, based on the complaint given by the appellant/P.W.1 discloses that after the demise of the deceased parents, the deceased was being taken care by the appellant and was living with them. On the date of occurrence, when the deceased accompanied by the appellant and her husband walking along the road, he has been done to death by the accused persons. Based on her complaint, police has taken up investigation.



5. Therefore, the appellant is not a third party, who set the law into motion. She is the blood relative of the deceased and she and her husband were taking care of the deceased. The expression victim is an including term and the word 'Loss' is also not restricted to physical or materiel loss, but includes 'any' loss. Hence, we hold that the appellant falls within the meaning of victim.

6. Back to the merits of the appeal, on completion of investigation, final report was filed against six accused, out of which overt act attribute only to the first accused for causing the death of Muthuraj, the sister son of the appellant. Against the rest of the accused 2 to 4, they were charged for conspiracy.

7. The trial Court, on considering the material relied upon by the prosecution, framed the charges, which runs as below:

- (i) against A1 to A6 for offence under Sections 120(b) r/w 302 IPC;
- (ii) against A1 for offence under Section 294(b) IPC;
- (iii) against A1, A4 and A5 for the offence under Sections 302 r/w.34 of IPC ; and



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(iv) against A1 for offence under Section 506(ii)IPC.

The accused persons were tied for the above charges.

8.To prove the charges, the prosecution has examined P.W.1 to P.W.19 Ex.P.1 to Ex.P.22 were marked. M.O.1 to M.O.7 were identified and marked. The trial Court, after considering the evidence and disbelieving the version of the prosecution, acquitted all the six accused from all the charges. Aggrieved by the same, the present appeal is filed.

9.The learned counsel appearing for the appellant/de-facto complainant submitted that the deceased and one Praveena D/o Aruna Juliet, who is the daughter of the first accused's maternal aunty were in love. This was not accepted by the family of Aruna Juliet and therefore, the deceased Muthuraj was warned by A1 earlier. Since he was continuing the affair, all the accused conspired together to do away the deceased Muthuraj and pursuant to the conspiracy, on 04.12.2015, at about 05.30 p.m., when the deceased accompanied by the de-facto complainant and her husband was proceeding to buy fuel, accosted him A1 and attacked with a sickle. The deceased tried to save his life and run towards the Northern direction, but,



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he was chased and attacked severely. Muthuraj was unable to proceed further with his injuries. He fell down near the house of one Duraipandi. Ambulance was called and was shifted to the hospital, but he was declared brought death. The complaint Ex.P.1 was lodged at 7.00 p.m., to the police and the same was registered in Crime No.156 of 2012. The complaint has implicated only A1 for his overt act and FIR was registered only against A1 at the first instance. The printed FIR was despatched immediately to the Judicial Magistrate through the Police Constable and reached him on the next day by 05.30 a.m.

10.It is further contended by the learned counsel for the appellant that the First Information Report given by the eye witnesses being clearly corroborated by P.W.1 in the chief examination and her evidence stands unimpeached and corroborated by P.W.3 and the evidence of P.W.18, the brother of P.W.1. Despite cogent and unimpeachable evidence, the case of the prosecution being suspected by the trial Court for no valid reason. A perverse order of acquittal being rendered, hence, the same is required to be set aside.



11.Per contra, the learned counsel for the respondents 2 to 7 would submit that the trial Court, after proper appreciation of evidence, has held that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt, on 5 grounds. The reasons enumerated by the trial Court and the submissions made by the learned counsel for the respondents are as below:-

(a)Failure to prove the motive. According to the learned counsel for the respondents 2 to 7/accused 2 to 3, the case of the prosecution is that the deceased was in love with one Praveena, daughter of Aruna Juliet and due to that, the deceased was done to death by A1, who is a close relative of Aruna Juliet. But, the prosecution has failed to examine Aruna Juliet and Praveena to prove the motive and therefore, when the motive is not proved, the prosecution case falls on ground and therefore, there is no perversity in the finding of the trial Court.

(b)The theory of conspiracy propounded by the prosecution has not been substantiated by any of the evidence and the witnesses examined to support the case of the prosecution, regarding the conspiracy have turned hostile and rightly not been believed by the trial Court.



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(c) The alleged occurrence took place at about 05.30 p.m., in the public place in front of the house of one Duraipandi. The said Duraipandi has not been examined by the prosecution. None of the public witnesses were examined to prove the case of the prosecution.

(d) It is the case of the prosecution that a cell phone was recovered from the scene of occurrence, but no investigation was conducted by the investigating officer to ascertain the ownership of the cell phone, if proper investigation done, it could have given a right lead about the assailant.

(e) The FIR was registered at 07.00 p.m., and it reached to the Magistrate Court, which is 13 km away from the police station, at 05.30 a.m., in the morning and there is no explanation for not forwarding the FIR forthwith.

12. The trial court taking note of the lapse on the part of the prosecution for not recovering any material like cane or cash to support their theory that the deceased along with first informant (P.W.1) and her husband went for shopping to purchase oil creates a grave doubt about the case of prosecution and therefore, extended the benefit of doubt to the accused persons and passed the order of acquittal. The acquittal gained by



them confers double benefit to them first presumption of innocence before trial and the second is the order of acquittal after trial therefore in the absence of notable perversity, same need not be unsettled.

13.This Court is clear in its mind that an order of acquittal need not be unsettled, unless and until it is perverse and absurd on the face of the records. As far as this case is concerned, the criminal law was set in motion by the eye witness. The complainant/P.W.1 details out how the deceased was intercepted by A1 armed with deadly weapon and attacked him saying that he must be done away for having affairs with Praveena, in spite of several admonition. He had chased him though the deceased fled to save his life. The injuries sustained by the deceased are mentioned in the complaint. A perusal of the postmortem report marked as Ex.P.15 and being spoken to by P.W.12 corroborates and ocular evidence of P.W.1. The Court below, while appreciating the evidence of P.W.1, has not given any satisfactory reason for disbelieving her cogent evidence. One of the reason for doubting the case of the prosecution, according to the learned trial Judge is that when the prosecution has projected the theory that the deceased Muthuraj came out of the house to purchase oil, he should have carried a container and cash. So



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the Police should have recovered the container and the money for purchasing oil. Failure on the part of the investigating officer from not recovering these two material objects, causes doubt about the prosecution case.

14.It is very unfortunate that the trial Court has gone tangently and disbelieved the prosecution for the non-recovery of oil cane and money, as a ground for acquittal. When the case of the prosecution that the deceased was carrying a container or cash, this ground reasoning on surmises cannot sustain the test of judicial scrutiny. To disbelieve the cogent and unimpeachable evidence of P.W.1 about the overt act of the first accused implicating him for causing the death of Muthuraj by inflicting multiple injuries on him using M.O.1, identified by P.W.1 before the Court, the trial Court has uninvented this reason.

15.This Court, on considering the reasons that the motive was not proved by examining Praveena and her mother Aruna Juliet, finds that it is a reason not relevant. The motive plays significant role in a criminal prosecution in case prosecution when there is no eye witness and



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circumstantial evidence alone relied by the prosecution, when the eye witnesses have spoken about the overt act which has caused the death of the victim Muthuraj, the motive become irrelevant for the prosecution. May be it may be relevant for defence, if he pleads provocation.

16.In this case, we find the motive also been proved by the prosecution through the other witnesses and it is not denied by the accused in his Section 313 questioning when incriminating evidence were put against him. In respect of the alleged delay in forwarding the express FIR to the Magistrate, we find the incident occurred on 04.12.2005 at 05.30 p.m., in a remote village at Srivaikundam Taluk. Complaint registered at 09.00 p.m.. Thereafter, through a Special Messenger copy of the FIR has been despatched and received by the Judicial Magistrate at his residence on the early morning at 05.30 a.m. on 05.02.2005, the initial of the Judicial Magistrate in the FIR marked as Ex.P-14, We find the FIR despatched later night had been received by the Magistrate early morning of the next day. Hence, there is no delay in despatch or receipt of FIR.



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17.This Court finds that the ocular evidence of P.W.1 corroborated by P.W-18 and the medical evidence goes to prove that the deceased was murdered by A-1. The proof of the fact is not on quantity, but quality. None examined of Duraipandi that before whose house the deceased fell after sustaining injuries and there is no reason to disbelieve the evidence available. Law does not prohibit an accused to summon a person to give evidence if he is under the impression that the prosecution ought to have examined them, but not examined.

18.Regarding the alleged conspiracy, the trial Court disbelieved the case of the prosecution has acquitted all the accused. This Court also find that the prosecution evidence on conspiracy not proved beyond doubt and the role of other accused 2 to 6 who were not proved to be present at the scene of crime are entitled for the order of acquittal. Hence, the trial Court judgment of acquittal has to be confirmed in respect of the accused 2 to 6.

19.No doubt, the prosecution witnesses had spoken about a cell phone found near scene of occurrence. Failure to recover it no way help the case of the accused, who had been seen by P.W.1 and P.W.18 carrying M.O.1 and



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causing injuries to Muthuraj. They have deposed that A1 chased the deceased and murdered Muthuraj by causing multiple injuries.

20.As far as the acquittal of the other accused viz., A2 to A6, this Court has nothing more to say, the theory of conspiracy, though being spoken by some of the witnesses. But, as pointed out by the learned counsel for the respondents, the principle laid down by the Hon'ble Supreme Court in the judgment in ***V.SEJAPPA-VS-STAE BY POLICE INSPECTOR LOKAYUKTA, CHITRADURGA***, reported in ***(2016) 12 SCC 150***, that acquittal on merits need not be disturbed, applies to the accused 2 to 6, but not to the unreasonable acquittal of A1 whose overt act has been spoken by the witnesses and proved by the prosecution beyond doubt.

21.In view of the reasons stated above, the order of acquittal as against A1 is set aside and he is convicted for the offence under Section 302 IPC. Regarding the other accused, the order of acquittal by the Court below is confirmed. By virtue of Section 235(2) Cr.P.C., no questioning of sentence alone since the minimum sentence prescribed for the offence under Section 302 ie., life sentence is imposed on the second respondent/A1 with



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fine of Rs.1,000/- and in default, to undergo one month simple imprisonment.

22.The second respondent shall surrender before the trial Court on or before 30.01.2023 for being committed to prison to undergo the sentence imposed. In case of failure to surrender, the first respondent police shall surrender him and remanded him to prison.

23.In the result, this Criminal Appeal is partly allowed.

(G.J.,J.) (S.M.,J.)
20.12.2022

Index:Yes/No

Internet:Yes/No

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To

1.The I Addl. Sessions Court,
Tirunelveli.

2.The Inspector of Police,
Eruvadi Police Station,
Tirunelveli District.

Copy to:

The Superintendent,
Central Prison,
Palayamkottai.



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