



Crl.R.C(MD)No.241 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.06.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.241 of 2010

P.Shanmugasundaram

... Petitioner/P.W.4

Vs.

- 1.State represented by,
The Inspector of Police,
Sathankulam Police Station,
Thoothukudi District.
Crime No.224 of 1996.
- 2.Murugan
- 3.Swaminathan
- 4.Sankaralingam
- 5.Parasamuthu
- 6.Ammaimuthu
- 7.Sudalaikannu
- 8.Mariappan
- 9.Pechimuthu
- 10.Sudalaikannu
- 11.Ramachandran
- 12.Sundar @ Shanmuga Sundaram
- 13.Chinnathurai
- 14.Senthurpandi
- 15.Rajagopal

... Respondents/
Accused Nos.1 to 14

PRAYER: Criminal Revision Case filed under Section 397(1) r/w 401 of the Code of Criminal Procedure, against the Judgment passed by the learned Additional Sessions Judge (Fast Track Court No.1), Thoothukudi, dated 17.09.2003 in S.C.No.402 of 2002, acquitting the respondents 2 to 15 herein from all the charges framed against them.



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For Petitioner	: Mr.N.Subramani
For R – 1	: Mr.Vaikkam Karunanithi Government Advocate (Criminal Side)
For R – 3	: Mr.G.Prabhakaran
For R – 15	: Mr.R.Pon Karthikeyan

ORDER

This revision has been filed as against the order of acquittal passed in S.C.No.402 of 2002, dated 17.09.2003, on the file of the learned Additional Sessions Judge (Fast Track Court No.1), Thoothukudi.

2.The case of the prosecution is that on 10.07.1996 at about 08.00 a.m., due to previous enmity in order to do away with the life of the deceased and other witnesses P.W.1 to P.W.4, all the accused persons with common intention attacked P.W.1 to P.W.4 and also deceased with deadly weapon. Due to which, P.W.1 to P.W.4 sustained grievous injuries and the deceased died due to grievous injuries.



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3. On the complaint, the respondent registered the F.I.R in Crime No.224 of 1996 for the offences under Sections 148, 324, 323, 307, 302 r/w 149 of I.P.C. After completion of the investigation, the respondent filed a final report as against A.1 and A.2 for the charge under Sections 148, 307, 302 and 323, 324 r/w 149 of I.P.C. As against A.3, the respondent filed a final report for the charge under Sections 148, 302 and 323, 324, 307 r/w 149 of I.P.C. As against A.4, the respondent filed a final report for the charge under Sections 148, 324 and 323, 307, 302 r/w 149 of I.P.C. As against Accused Nos.5, 8, 10, 11, 14 and 15, the respondent filed a final report for the charge under Sections 148, 324, 307, 323, 302 r/w 149 of I.P.C. As against Accused Nos.6, 9 and 13, the respondent filed a final report for the charge under Sections 148, 324, 307, 323, 302 r/w 149 of I.P.C and as against A.7 and A.12, the respondent filed a final report for the charge under Sections 147, 323 and 324, 307, 302 r/w 149 of I.P.C. The same has been taken cognizance by the trial Court in S.C.No.402 of 2002 on the file of the learned Additional Sessions Judge (Fast Track Court No.1), Thoothukudi.



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4.On the side of the prosecution, they had examined P.W.1 to P.W.18 and marked Ex.P.1 to Ex.P.37. The prosecution also produced material objects M.O.1 to M.O.14. On the side of the accused, they marked Ex.D.1 to D.4 and no one was examined on their behalf.

5.On perusal of the oral and documentary evidence, the trial Court found all the accused not guilty and acquitted them from all the charges.

6.The learned counsel appearing for the petitioner would submit that one of the victims already filed a revision petition in Crl.R.C.No.1853 of 2003 and the same was also dismissed as withdrawn. Thereafter, another victim, namely P.W.4, filed the present revision as against the order of acquittal on the ground that in order to prove the case of the prosecution, they had examined P.W.1 to P.W.18. Though the witnesses happen to be relatives of the victims, their evidence cannot be rejected on the ground that they are interested witnesses since they were eyewitnesses to the occurrence and they categorically deposed that the accused persons attacked P.W.1 to P.W.4 and attacked the deceased, due to which,



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the deceased died. They also categorically deposed about the specific overt act of each accused. The occurrence had taken place in the year 1996 and the eyewitnesses had deposed only in the year 2003. Therefore, it is quite natural that the witnesses would not be in a position to depose in the manner as found in the statement recorded under Section 161 of Cr.P.C. Further, raised the ground that the counter-complaint lodged by the accused was not dealt with in accordance law by the respondent and as such, the victims cannot be punished for the mistake committed by the respondent herein. Therefore, the trial Court ought to have acquitted the accused persons and prayed for remand for a fresh trial.

7.Per contra, the learned counsels appearing for the contesting respondents would submit that due to the alleged occurrence, Accused Nos.2 to 5 also sustained grievous injuries, due to which, they also admitted into hospital. In fact, their statements were recorded in the accident register and all the accident registers were marked as Ex.D.1 to Ex.D.4. In fact, after the occurrence, immediately one of the accused lodged the complaint and the same had been registered in Crime No.223 of 1996 for the offences under Sections 147, 148, 324, 326 and 307 of I.P.C. However, the



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respondent suppressed those facts and without even completing the investigation, simply kept in the dark and filed a final report only in the complaint lodged by the injured witness. Therefore, it is fatal to the case of the prosecution and the trial Court rightly acquitted the accused persons. That apart, the ocular witness does not corroborate with the medical evidence in respect of the injuries sustained by P.W.1 to P.W.4 and also injuries sustained by the deceased. Therefore, the trial Court rightly acquitted the respondents 2 to 15 and the same does not warrant any interference by this Court.

8.Heard the learned counsels appearing on either side and perused the materials available on record.

9.There are totally 14 accused in which all of them were acquitted by the trial Court from the charges as stated earlier. One of the victims also filed a revision as against the order of acquittal in Crl.R.C(MD)No.1853 of 2003 and the same was dismissed as withdrawn by an order dated 07.08.2007. Thereafter, the petitioner filed this revision as against the order of acquittal. On perusal of the records revealed that A.2 to A.5 sustained grievous injuries in the



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very same occurrence. They lodged the complaint and the same was registered by the respondent in Crime No.223 of 1996 for the offences under Sections 147, 148, 324, 326 and 307 of I.P.C as against P.W.1 and others. Insofar as the murder was concerned, P.W.4 lodged the complaint and the same was registered in Crime No.224 of 1996. Immediately, the injured accused persons went to the Hospital and they were treated, after recording the accident registers of Accused Nos.2 to 5, which were marked as Ex.D.1 to Ex.D.4, dated 10.07.1996. However, the respondent failed to complete the investigation in Crime No.223 of 1996 and completely suppressed before the trial Court. Only during the cross-examination of the Investigating Officer by the accused, those documents were brought to the knowledge of the trial Court and the same was marked Ex.D.1 to Ex.D.4.

10.On perusal of the deposition of the Investigating Officer P.W.18 revealed that he categorically admitted the fact that on the complaint lodged by the accused persons, he registered the F.I.R in Crime No.223 of 1996. That apart, the Doctor who treated Accused Nos.2 to 5 was examined as P.W.11. He also categorically admitted that the injuries sustained by Accused Nos.2 to 5 were



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treated by him. He recorded the accident register and the same was marked as Ex.D.1 to Ex.D.4. Thus, it is clear that the accused persons also sustained grievous injuries and were treated by P.W. 11. However, the Investigating Officer failed to complete the investigation in Crime No.223 of 1996 and its fate of investigation also in darkness. It is fatal to the case of the prosecution.

11.The injuries sustained by the deceased as well as P.W.1 to P.W.4 also not proved by the medical evidence. The Doctor, who treated P.W.1 to P.W.4 was examined as P.W.12. He deposed that all the injuries were not happened due to the weapon produced by the prosecution. Therefore, the prosecution failed to prove its case and as such, the trial Court rightly acquitted the respondents 2 to 15 herein.

12.In this regard, it is relevant to rely upon the Judgment of the Honourable Supreme Court of India in ***Chinnam Kameswara Rao and others Vs. State of Andhra Pradesh*** reported in **(2013) 12 SCC 689**, wherein it is held as follows:-



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"12.A recent decision of this Court in Murugesan & Ors. v. State 2012 (10) SCALE 378 is a timely reminder of the principles that were succinctly enunciated in an earlier decision of this Court in Chandrappa & Ors. v. State of Karnataka (2007) 4 SCC 415, in the following words:

"21..... "42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(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.” (emphasis supplied)

12. What, therefore, needs to be examined in the light of the settled legal position is whether the view taken by the trial Court acquitting the accused was a reasonably possible view. If the answer is in the negative nothing prevents the Appellate Court from reversing the view taken by the trial Court and holding the accused guilty. On the contrary, if the view is not a reasonably possible view the Appellate Court is duty bound to interfere and prevent miscarriage of justice by suitably passing the order by punishing the offender. We have in that view no



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hesitation in rejecting the contention that just because the trial Court had recorded an acquittal in favour of the appellants the Appellate Court had any limitation on its power to reverse such an acquittal. Whether or not the view was reasonably possible will be seen by us a little later when we take up the merits of the contention urged by the appellant regarding involvement of the accused persons in the commission of the crime”.

13. Thus, it is clear that since because the trial Court acquitted the accused, the Appellate Court cannot interfere with the order of acquittal without any substantial and compelling reasons. There cannot be any dispute in regard to the legal proposition that an appellate Court while entertaining an appeal from a Judgment of acquittal would not ordinarily interfere therewith, if two views are possible. In the case of acquittal, there is a 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



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trial Court. Further, 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.

14.In view of the above, this Court finds no infirmity or illegality in the order passed by the Court below and the order of acquittal cannot be entertained mechanically. Hence, this Criminal Revision Case fails and the same is dismissed.

14.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To

- 1.The Additional Sessions Judge
(Fast Track Court No.1),
Thoothukudi
- 2.The Inspector of Police,
Sathankulam Police Station,
Thoothukudi District.
- 3.The V.R Section (Records),
Madurai Bench of Madras High Court,
Madurai.



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G.K.ILANTHIRAIYAN, J.

ps

Order made in
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