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Crl. O.P. No.15289/2016 – CA SR 30001/2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19.06.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NO.15289 OF 2016

IN

CRL. A. SR. NO. 30001 OF 2016

State, rep. By

The Public Prosecutor

High Court, Madras

(E-5, Pattinapakkam Police Station)

.. Petitioner

- Vs -

1. Thiru Subramani @ Jeyandra Saraswathi Swamigal

2. Thiru. Sundaresan

3. Thiru. Raghu

4. Thiru V.Sundar @ Meenakshisundaram

5. Thiru B.Anand @ Anandkumar

6. Thiru. S.Lakshmanan

7. Thiru G.Boomi @ Boominathan

8. Thiru. R.Kannan

9. Thiru S.Kumar @ Chinna Kumar

.. Respondents

Criminal Original Petition filed u/s 378 (3) Cr.P.C. praying this Court to grant leave to appeal to this Hon'ble Court against the judgment of acquittal of the respondents/accused (A-1, A-3 & A-6 to A-11), passed in S.C. No.500/2005 dated 29.04.2016 by the Court of I Addl. Sessions Judge, Chennai.



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For Petitioner : Mrs. G.V.Kasthuri, APP

For Respondents : Mr. P.Rajarathinam, SC, for
M/s.K.S.Vaithianathan for RR-2 & 3
RR-1 & 9 – Died
No Appearance for RR-4, 5, 7 & 8
No Representation for R-6

ORDER

Assailing the order of acquittal passed by the I Addl. Sessions Judge, Chennai, in S.C. No.500/2005, acquitting the accused/respondents herein, the State has filed the present petition seeking leave to file appeal.

2. Learned Addl. Public Prosecutor appearing for the petitioner submitted that the grounds on which acquittal has been recorded is flawed. It is submitted that no weightage had been given to the evidence of the prosecution while the court below had only given weightage to the evidence of the accused. It is the further submission of the learned Addl. Public Prosecutor that the trial court had not considered the evidence of the injured witnesses in proper perspective and that the appreciation of evidence by the trial court is based on wrong appreciation of evidence. It is the further submission of the learned Addl. Public Prosecutor that though the prosecution has proved its case, however, without considering the same, the trivial discrepancies in the evidence of the witnesses has been blown out



of proportion for the purpose of granting benefit of doubt to the accused so as to acquit them of the charges. It is the further submission of the learned Addl. Public Prosecutor that the intent of the accused in committing the crime should be the basis for the court to decide the culpability of the accused and not the result of the said act. Merely because there are discrepancies in the evidence of the witnesses alone cannot be the basis to reject their evidence in toto when there are corroborations, which goes to the root of the case. It is further submitted that the evidence of the witnesses have not been properly considered as even from the outset their evidence were scrutinized with an yellow glass. It is further submitted that the complaint of the deceased prior to his death has not been properly appreciated. It is therefore submitted that the aforesaid infirmities in the appreciation of evidence coupled with the other points show that there are arguable points in the appeal and, therefore, leave may be granted by this Court to file the appeal.

3. Learned senior counsel and the learned counsel appearing for the respective respondents submitted that there are not only inconsistencies and infirmities in the evidence of the witnesses, but even the conspiracy alleged by the prosecution has not been established, as the witness, who has been listed to speak



about the conspiracy turned hostile. Further, it is the submission of the learned counsel that there are umpteen contradictions in the evidence of the witnesses which render the prosecution version wholly whimsical and unsustainable. It is the further contention of the respondents that though A-7 and a-8 had taken the plea of alibi, however, the prosecution having not proved its case, the defence did not establish the same, as the defence was not required to submit any evidence, when the prosecution has miserably failed to establish its case. It is the further submission of the learned counsel that leave should not be claimed as a matter of right, but it is for the prosecution to establish that if leave is not granted it would be prejudicially affected as the findings are perverse and arbitrary. However, the appellant not having established the same, leave ought not be granted as the presumption of innocence of the accused is strengthened by the judgment of acquittal.

4. Heard the learned Addl. Public Prosecutor appearing for the petitioner and the learned senior counsel and other learned counsel appearing for the respective respondents and perused the materials available on record.

5. Time and time again, the scope and power of the High Court to interfere



with an order of acquittal recorded by the trial court has been highlighted by the Supreme Court and recently in ***Babu Sahebagouda Rudragoudar & Ors. – Vs – State of Karnataka (C.A. No.985/2010 – Date – 19.04.2024)***, the Supreme Court had captured the ratio succinctly, which have to be followed in an appeal against an order of acquittal and for refreshing the law, the same is quoted hereunder :-

*37. This Court in the case of **Rajesh Prasad v. State of Bihar and Anr. (2022 (3) SCC 471)** encapsulated the legal position covering the field after considering various earlier judgments and held as below: -*

*“29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: (**Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415]***

“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, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it



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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.

38. Further, in the case of *H.D. Sundara & Ors. v. State of Karnataka (2023 (9) SCC 581)* this Court summarized



the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows: -

“8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

(a) That the judgment of acquittal suffers from



patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

40. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.”

(Emphasis Supplied)

6. Thus, from the aforesaid proposition of law, it is beyond a cavil of doubt that the power of this Court is not curtailed or limited, as it is within its realm to reappreciate the evidence available on record to render a finding. However, in reappreciating the evidence, this Court has to see whether the view taken by the trial court could not be taken by any prudent man on appreciating the materials available before it. If the view taken by the trial court, considered overall on the materials placed, is just and reasonable that the view taken by the trial court is on proper appreciation of the materials, the High Court cannot interfere with the acquittal on the ground that another view is possible.



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7. However, the present case has been filed seeking leave of the court to file appeal against the acquittal of the respondents. In such a scenario, a further duty is cast upon the appellant to break the doubled layered presumption, which shields the respondents, as the trial court has given a clean chit by acquitting them. Therefore, the duty cast on the prosecution is doubled, as not only it has to establish that the view arrived at is erroneous, but that the non-grant of leave would prejudicially affect the prosecution.

8. It is oft quoted that grant of leave is not a matter of right; rather it is the edifice on which the liberty of the person, who has been accused of a crime rests and where a person, who had been accused of a crime had been acquitted by the court below, a presumption follows the golden rule that a person is presumed innocent until proven guilty and on that basis the second presumption on the basis of the acquittal necessitates the appellate court to scrutinize the materials more carefully. Further, grant of leave to the prosecution should not be as a matter of routine, but should be on just and equitable basis, when materials reveal that the court below has not appreciated the materials in proper perspective.



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conspiracy and have not supported the prosecution version.

12. Considering all the evidence, the trial court has come to the conclusion that the prosecution has not proved its case and that the evidence of the prosecution bristles with very many infirmities and discrepancies and the contradictions in the evidence of the witnesses coupled with the other materials, which do not lend any support to the prosecution, the trial court has rightly rejected the case of the prosecution.

13. It is also evident from the materials that the identification of the accused is wholly flawed as P.W.s 1 to 3 were not aware about the identity of A-7 and A-8, who are alleged to have attacked them. In fact, there is no material in the complaint as to the physical features of A-7 and A-8. However, the manner in which they were identified has not been properly established and the same has been rightly appreciated by the trial court.

14. Further, there is no material connecting all the accused in the commission as the theory of conspiracy has not been established. Once the theory of conspiracy fails, the connecting link stood severed and these aspects have been rightly appreciated by the trial court to arrive at the conclusion.



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15. Further, the trial court has also rightly held that though the defence had taken the plea of alibi insofar as A-7 and A-8 are concerned, but the same needs to be proved only after the prosecution has proved its case and the prosecution having miserably failed to prove its case, there was no requirement for the defence to establish the plea of alibi and it is very much within the discretion of the defence to place materials, as the respondents cannot be compelled to submit evidence. The said aspect also has been properly appreciated by the trial court while acquitting the accused/respondents.

16. As stated above, to grant leave, a case should be made out which bristles with infirmities which strikes at the root of the findings recorded. However, in the case on hand, the prosecution, has not made out a case warranting this Court to grant leave to set right the wrong that has been committed by the court below.

17. Further, the petition for grant of leave has been filed in the year 2016, yet no steps have been taken by the prosecution to diligently prosecute the petition. In the absence of any infirmities and there being no diligence shown by



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the prosecution, granting leave at this distant point of time would be nothing but travesty of justice insofar as the respondents are concerned.

18. In the aforestated circumstances, no case is made out by the petitioner for grant of leave and, accordingly, this criminal original petition is dismissed. Consequently, the criminal appeal is rejected at the SR stage itself.

19.06.2024

Index : Yes / No

SKT/GLN

To

1. The I Addl. Sessions Judge
Chennai.
2. The Public Prosecutor
High Court, Madras.



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M.DHANDAPANI, J.

SKT/GLN

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AND
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