



CRL. A. No.248/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
18.04.2024	26.04.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. A. NO. 248 OF 2021

State, rep. By
The Deputy Superintendent of Police
O.C.U – CBCID
Madurai City.

.. Appellant

- Vs -

1. D.Karthikeyan
2. S.Sabeer Ahamad
3. M.Umar Mukthar
4. S.Rajkumar

.. Respondents

Criminal Appeal filed under Section 378 of the Code of Criminal Procedure praying to set aside the judgment of acquittal of the respondents/accused (A-1 to A-4) in S.C. No.8 of 2013 on the file of the Principal District & Sessions Judge, Thiruppur, dated 14.07.2017 and convict the respondents/accused for the offences framed against them.



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For Appellant : Ms. G.V.Kasthuri, APP
For Respondents : Mr. V.Parthiban for RR-1 & 4
Mr. V.Parthiban for
Mr. Mohd. Saifulla for R-3
Mr. M.Manoharan for
Mr. A.Balaji for R-2

JUDGMENT

Assailing the judgment in and by which the respondents, who were accused in S.C. No.8 of 2013 on the file of the Principal District & Sessions Judge, Thiruppur, were acquitted of the charges framed against them, the present appeal has been filed by the prosecution.

2. For brevity, in this judgment, the respondents, who are the accused A-1 to A-4 and the appellant herein will be referred to as prosecution and accused.

3. The accused, viz., A-1 to A-4 were charged and tried for the offences under Sections 120-B, 363, 307, 392 and 392 r/w 397 IPC and after trial, the trial court acquitted all the accused of the aforesaid charges finding that the prosecution has not proved the case as against the accused.



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4. Shorn of unnecessary details, the case of the prosecution could be summarised as under :-

P.W.1 is the brother-in-law of P.W.12 and the brother of P.W.2. P.W.12 and P.W.2 are husband and wife and they own cars and P.W.12 is running a travels in which P.W.1 is working as driver. P.W.1 was operating the car as a taxi from Geetha Car Road, which is opposite to Coimbatore Railway Station and the car is stationed in the said place.

5. On 14.6.09 at about 5.30 a.m., when P.W.1 was at the designated place opposite the Railway Station with his car, P.W.3 brought A-1 to A-4 and came to the place where P.W.1 was stationed and enquired whether he was willing to take A-1 to A-4 to Trichy for which P.W.1 informed P.W.3 that he will have to check up with P.W.12. Accordingly, P.W.3, after conversing with P.W.12 and fixing the rate for the ride, A-1 to A-4 boarded the taxi driven by P.W.1. While P.W.1 was driving the car with A-1 to A-4 on board through Palladam Road, the accused asked P.W.1 to stop the car for the purpose of attending nature's call. The accused deboarded the car and went to attend the nature's call and on



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return, while one of the accused sat in the front seat along with P.W.1, the other accused sat on the back seat. Upon being seated, one of the accused caught hold of the neck of P.W.1 and P.W.1 was pushed to the back side where the hands and the legs of P.W.1 were tied and the mouth of P.W.1 was sealed with cellotape. One of the accused drove the car and after travelling for about 1 ½ Kms., on the Palladam-Kunnadam Main Road, the accused stopped the vehicle and after taking all the money, ATM card, mobile phone from the pocket of P.W.1, P.W.1 was thrown into the bushes and the accused fled away from the said place with the car. P.W.1, thereafter, from near Kunnadam Police Station, called P.W.12 over phone and informed him about the incident. P.W.12 reached the place from where P.W.1 had called at about 9.00 a.m., and, thereafter, P.W.s 1 and 12 went to Kunnadam Police Station and gave the complaint, Ex.P-1.

6. P.W.9, the Sub-Inspector of Police, at the relevant point of time, attached to Kunnadam Police Station, upon receiving the complaint from P.W.1 regarding the incident, recorded the same into writing in which P.W.1 affixed his signature and P.W.9 registered the case in Crime No.232/09 by preparing printed FIR, Ex.P-4 for the offences u/s 342, 392 and 394 r/w 397. Ex.P-4 along



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with Ex.P-1 were, thereafter, forwarded to the Judicial Magistrate, Dharapuram and a copy of the same was placed before Inspector of Police for investigation. The bloodstained shirt, pant, two ropes and cellotape, viz., M.O.s 1 and 2 series which were produced by P.W.1 were seized under Form-95, Ex.P-5. P.W.1 was sent to the Government Hospital, Dharapuram under police memo as P.W.1 had suffered injuries. The material objects seized from P.W.1 were sent to the Judicial Magistrate Court under Form-95.

7. P.W.1, upon being produced before P.W.10, the doctor, under police memo, was examined by P.W.10 at which time P.W.1 had informed P.W.10 that he was attacked by four unknown persons near EB power office near Dharapuram-Coimbatore Main Road. The following injuries were noted by P.W.10 on the person of P.W.1 :-

- i) Blood clot on the right eye;*
- ii) 2 x 2 cm contusion on the left upper and lower lips;*
- iii) 1 x 1 cm abrasion below the chest;*
- iv) 4 x 2.5 cm abrasion on the back.*



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The doctor, P.W.10, issued Ex.P-6, accident register in respect of the injuries noted on the person of P.W.1.

8. P.W.18, the Inspector of Police of Kunnadam Police Station at the relevant point of time, on receipt of Ex.P-4, on 16.6.09, took up investigation and reached the scene of occurrence at about 1.30 p.m. on 16.6.09 and in the presence of witnesses prepared Ex.P-3, observation mahazar and drew rough sketch, Ex.P-16. Returning back to the police station, P.W.18 examined P.W.s 1, 11, 3, 6, 7 and Balakrishnan and recorded their statements. On 18.6.09, the clothes that were seized from P.W.1 were sent to the Court with a requisition to send the same for chemical examination. On coming to know about the vehicle, viz., Tata-Sumo, which was involved in the present case, being found parked near the Vinayakar Temple at Dindigul Round Road, which was seized in Crime No.699/03 u/s 102 IPC by Dindigul North Police, P.W.18 reached Dindigul North Police Station and on coming to know that the vehicle was handed over to the Tahsildar, Dindigul, requisition was given to the Tahsildar, Dindigul for handing over of the vehicle to P.W.18 and upon receiving the orders of the Director



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General of Police transferring the investigation to CB-CID, the files relating to the case were handed over to the authorities of CB-CID by P.W.18.

9. P.W.19, the Sub Inspector of Police, before whom the Village Administrative Officer of Chettinaickenpatti Village appeared and gave a written complaint with regard to the vehicle which was found parked near the Vinayakar Temple, the said complaint was received and registered as Crime No.633/03 u/s 102 IPC and the FIR along with the complaint were forwarded to the Judicial Magistrate No.2, Dindigul. Further, P.W.19, taking up investigation, reached the place where the car was parked and the same was seized in the presence of the Village Administrative Officer, Chettinaickenpatti. Upon seizing the car and the sim cards and other items, which were in the car, P.W.19 contacted P.W.1 and on coming to know that the car was involved in Crime No.633/04, which case had been transferred to CB-CID, the case papers along with the car were placed before the CB-CID.

10. P.W.20, the Inspector of Police attached to CB-CID, at the relevant point of time, on transfer of investigation relating to Crime No.504/09 and



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208/09, took up investigation of both the crimes together. Thereafter, P.W.20 also received the case relating to Crime No.633/09, which is the present case along with the statements of all the witnesses, which have been recorded and also the exhibits and material objects relating to the said crime and also the Tata-Sumo vehicle and took up investigation of the said case as well. Thereafter, all the case files relating to the three cases were handed over to the Deputy Superintendent of Police for further investigation.

11. P.W.21, the Deputy Superintendent of Police attached to Madurai City Police Station, who was then the Inspector of Police at the relevant point of time, took up investigation of Crime Nos.504/09 relating to the death of one Dr.Baskaran along with Crime No.633/09 and as the present crime was also connected with Crime No.504/09, proceeded with the investigation. Upon On receiving information, on 22.8.09, P.w.21 arrested A-1 and A-3 at Raj Theatre, Udumalpet, they were also arrested and enquired with regard to Crime No.232/09 and they gave a voluntary confession statement. Further on 23.08.09, A-4 was arrested by Inspector of Police, Saravanan and A-4 also gave a voluntary confession statement. Based on the arrest, P.W.21 gave requisition to



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the Judicial Magistrate No.1 for conducting test identification parade in respect of the accused and test identification parade was conducted by the Judicial Magistrate No.1.

12. Based on the requisition issued by P.W.21, P.W.16, the Judicial Magistrate No.1, Dindigul, on the basis of the orders of the Principal District Judge, conducted test identification parade on 11.9.09 at about 10.15 a.m., with regard to A-3 and A-2. During the test identification parade, P.W.s 1 and 12 identified A-2 and A-3. The report with regard to the test identification parade conducted by P.W.16 is Ex.P-14.

13. Thereafter, on 14.9.09, on further requisition, P.W.16 conducted test identification parade in respect of A-1 and A-4 during which P.W.s 1 and 12 identified A-1 and A-4 and the report of the test identification parade prepared by P.W.16 is marked as Ex.P-15.

14. P.W.21, thereafter, examined P.W.1 and recorded his statement. On 14.9.09, P.W.21 arrested A-2 and A-3 formally near Boston School. On 16.9.09,



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at about 10.20 a.m., at District Jail, P.W.21 arrested A-1 and A-4 formally and served the arrest copy. P.W.21, thereafter, examined the other witnesses and recorded their statements. Thereafter, P.W.21 verified the observation mahazar and rough sketch prepared by P.W.18. On completion of investigation, P.W.21 filed the final report against the accused on 12.11.09.

15. The accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them in the evidence of the prosecution witnesses. They denied all the incriminating circumstances. No defence witnesses were examined nor any written statement was filed.

16. The trial court, on consideration of oral and documentary evidence and other materials, acquitted the accused of all the charges framed against holding that the prosecution has not proved its case as against the accused. Aggrieved by the said acquittal, the appellant has filed the present appeal.

17. Learned Addl. Public Prosecutor appearing for the appellant submitted that the findings recorded by the court below that there are discrepancies in the



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evidence of P.W.1 and Ex.P-4, FIR and, therefore, the same cannot be believed has to be interfered with in view of the stand taken by P.W.1, while deposing at the time of trial. The discrepancy in the evidence before the Court and the FIR has been clearly explained by P.W.1 and coupled with the identification of the accused in the test identification parade by P.W.1, the complicity of the accused in the commission of the crime has been clearly established by the prosecution.

18. It is the further submission of the learned Addl. Public Prosecutor that the abduction, robbery of cell phone and money from P.W.1 by the accused stands established by the fact that the cell phone along with SIM cards were recovered from the car by the law enforcing agency, which proves that the version spoken to by P.W.1 does not require to be disbelieved as it is clothed with truthfulness.

19. It is the further submission of the learned Addl. Public Prosecutor that the abduction of P.W.1 under knife point and tying his hands and legs with rope and covering his mouth and face with cello tape have been clearly spoken to by P.W.1 and mere omission of certain details in the FIR cannot be a ground to



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reject the FIR in its entirety when the evidence of P.W.1 before the Court clearly establishes that it was the accused who had kidnapped P.W.1 and had robbed all the materials from P.W.1.

20. It is the further submission of the learned Addl. Public Prosecutor that the findings of the court below with regard to the ownership of the vehicle, M.O.3 not being proved is wholly erroneous as the vehicle, which was under the custody of P.W.1 was robbed by the accused and utilised by the accused by fixing different number plate, which has been proved through the evidence of P.W.s 1, 2 and 12.

21. It is the further submission of the learned Addl. Public Prosecutor that FIR is not an encyclopaedia and the discrepancies in the FIR cannot be the basis to discredit the testimony of P.W.1, who had faced a brutal attack at the hands of the accused and after recovery P.W.1 had given the correct version, which is recorded u/s 161 Cr.P.C. and, therefore, the statement of P.W.1 recorded u/s 161 Cr.P.C., coupled with his deposition at the time of trial clearly and conclusively prove that the accused had committed the offence.



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22. It is the further submission of the learned Addl. Public Prosecutor that P.W.s 1 and 12 had clearly identified the accused in the identification parade conducted by P.W.16 which are revealed by the reports, Exs.P-14 and P-15 and the said identification is in conformity with the deposition of P.W.s 1 and 12. Therefore, the discrepancies pointed out by the trial court between the evidence of P.W.1 and the FIR, Ex.P-4 would not amount to material contradictions, which hit at the root of the prosecution case and, therefore, the said findings required to be interfered with.

23. It is the further submission of the learned Addl. Public Prosecutor that the discrepancy in the age as given in the FIR and the deposition of P.W.1 would materially affect the case of the prosecution is wholly erroneous as the witness is only bound to give an approximate age and certain discrepancies in the age would not be a ground to doubt the deposition of P.W.1.

24. It is the further submission of the learned Addl. Public Prosecutor that the evidence of P.W.1 has been unshaken inspite of extensive cross examination,



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yet the court below has disbelieved the evidence of P.W.1 and acquitted the accused for want of proper materials, which suffers the vice of illegality and appreciation of evidence in proper perspective and, therefore, the acquittal of the accused deserves to be set aside.

25. Learned Addl. Public Prosecutor also placed before this Court the conviction suffered by the respective accused in the other cases, which were filed against them to show that the accused are repeated offenders, who have perpetrated the offence in the present case as well and the discrepancies not affecting the substratum of the case, the trial court ought to have convicted the accused, however, erroneously, acquitted them, which requires to be interfered with.

26. Per contra, learned counsel appearing for the respective accused, in unison, submitted that the judgment of acquittal passed by the trial court is just and proper. It is the submission of the learned counsel that in case of an appeal against an order of acquittal, the appellate court should be slow in interfering with the said acquittal unless the prosecution is able to establish that the



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judgment of the trial court suffers with perversity and is based on non-appreciation of evidence.

27. It is the submission of the learned counsel that the whole case of the prosecution lingers upon the evidence of P.W.1, however, the said evidence of P.W.1 before Court is in total contradiction to Ex.P-1, the complaint. It is the further submission of the learned counsel that the evidence of P.W.s 1 and 12, who have gone together and given the complaint clearly show that they have given a complaint with false materials, so as to enrich themselves. In fact, the evidence of P.W.12 is categorical to the effect that based on the advice of the insurance advisor, they have given the complaint. When P.W.s 1 and 12 have spoken falsity in the complaint by giving certain details, which are contradicted later in point of time during their deposition before the court, the veracity of the said deposition should be looked at with more care and caution and, rightly disbelieving their evidence for the reasons, which have been clearly recorded in the judgment, the trial court had acquitted the accused.



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28. It is the further submission of the learned counsel that the identification of the accused in the test identification parade conducted by P.W.16 cannot be the basis to return a conviction, as the evidence of P.W.s 1 and 12 clearly show that they have seen the accused prior in point of time to the date of the test identification parade. In fact, based on certain newspaper clippings in which the accused were alleged to have committed a murder, their photographs were published, which were looked at by P.W.s 1 and 12, as could be culled out from their evidence and, therefore, the test identification parade loses its significance and cannot form the basis for convicting the accused by accepting the deposition of P.W.s 1 and 12.

29. It is the further submission of the learned counsel that there is a grave doubt even with regard to the identification of the accused by P.W.1 as at the earliest point of time, when P.W.1 was examined by the doctor, P.W.10, P.W.1 has clearly stated that four unknown persons had attacked him. Therefore, P.W.1 not being aware of the identity of the persons, the identification made by P.W.1 in the test identification parade could only have been on the basis of P.W.1 refreshing his memory through the newspaper reports, which carried the



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photographs of the accused. Further, P.W.16, the Magistrate, who conducted the test identification parade had deposed that he is not aware whether the photographs of the accused were shown to P.W.s 1 and 12 prior to the identification of the accused by the witnesses.

30. It is the further submission of the learned counsel that P.W.3 is the person, who had initially accepted to take the accused to Trichy by renting his car, however, due to certain reasons, which have been deposed, P.W.3 had called upon P.W.1 to take the accused to Trichy by renting his car. That being the case of the prosecution, the prosecution ought to have made P.W.3 participate in the test identification parade to identify the accused. But P.W.3 has not been called upon to identify the accused, but two other persons, who have not been called upon as a witness, were called upon to identify the accused, when the manner in which the said persons are connected with the case are not spelt out by the prosecution through their evidence.

31. It is the further submission of the learned counsel that for the sake of argument, even without admitting that P.W.12 had travelled in the taxi, it is the



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evidence of P.W.1 that P.W.12 had driven the car initially and P.W.1 was a passenger, as could be ascertained from Ex.P-1 complaint and in the complaint, P.W.1 had stated that for the purpose of having tea the accused asked P.W.12 to stop the car and P.W.12 and one of the accused had got down and went for having tea at which point of time, the car keys were left in the car itself. However, in the deposition, P.W.1 had stated that the accused coming back from having tea, had the keys with him and had started the car, which is in contradiction to Ex.P-1. The complaint, Ex.P-1, given by P.W.1 is squarely opposite to the deposition of P.W.1 and P.W.12 before the Court. Though P.W.s 1 and 12 have spelt out the reason for giving such a complaint, the act of the witnesses should be looked into with more caution, as for the purpose of enriching themselves, P.W.s 1 and 12 would go to any extent as could be evident from Ex.P-1 complaint given by them, the contents of which complaint, they themselves concede is a falsity. Such being the case, the veracity of the evidence of P.W.s 1 and 12 cannot be accepted and once the evidence of P.W.s 1 and 12 is brushed aside, there is no other evidence connecting the accused with the crime. All the aforesaid aspects have been rightly appreciated by the trial court in proper perspective while acquitting the accused and, therefore, no interference



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is warranted with the well considered judgment recorded by the court below.

32. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

33. 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 Rudragoudqr & 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



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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, reappraise 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 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.



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(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 reappraise the oral and documentary evidence;



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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)

34. 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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35. In light of the above legal principles enunciated by the Apex Court, this Court will now proceed to analyse the evidence on record to find out whether the view arrived at by the trial court is based on the materials available on record.

36. The weight of the evidence which had prevailed upon the trial court to return a verdict of acquittal is based on the evidence of P.W.s 1 and 12 vis a vis Ex.P-1 complaint and the identification of the accused by P.W.s 1 and 12 in the test identification parade.

37. Ex.P-1, the complaint given by P.W.1 is the earliest document, which had come into existence as to the manner in which the accused are alleged to have committed the crime. The said complaint, Ex.P-1, given by P.W.1 narrates the scenario to the effect that on 14.6.09, at about 5.30 a.m., when P.W.s 1 and 12 were in the taxi stand, P.W.3 had brought the accused for the purpose of hiring the taxi of P.W.12 to go to Trichy and after fixing the charges, P.W.12 had driven the vehicle carrying the accused and also P.W.1, who was seated in the back seat. It is further evident from Ex.P-1 that on reaching the Palladam Bus



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Stand, the car was stopped opposite a hotel and P.W.12 and one of the accused alighted from the car for the purpose of having food. Further, when P.W.12 alighted from the car, he had left the car keys in the car as P.W.1 was inside the car. Thereafter, in a short while, the accused, who had went along with P.W.12, returned alone and seated in the car and one of the accused, who was in the car shifted to the driver seat. At that time, the other accused caught hold of P.W.1 and threatened him at knife point and they tied the legs and hands of P.W.1 and also covered his mouth, eyes and ears with cello tape and the car proceeded for about half an hour at which point, the car was stopped and taking all the belongings from P.W.1, including the cellphone, cash and other identity cards, including the driving licence, P.W.1 was dumped in a bush and the accused fled along with the car. Thereafter, P.W.1 identified the place as Kunnadam and from a public telephone had called P.W.12, who came to the spot and, thereafter, they proceeded to the police station to lodge a complaint.

38. The sum and substance of the complaint, which is the earliest document to come into existence reveals that both P.W.s 1 and 12 had travelled



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in the car and at a particular point, leaving P.w.12, the accused had eloped with the vehicle along with P.W.1 and, thereafter, ditched P.W.1 and fled with the car.

39. However, when P.W.1 was examined during trial, P.W.1 had deposed that P.W.3 had brought the accused for the purpose of hiring the taxi of P.W.12 and P.W.1 after conversing with P.W.12 and after P.W.12 finalising the hiring charges with P.W.3, P.W.1 had taken the accused in the taxi towards Trichy. It is the further deposition of P.W.1 that he was driving the taxi and after proceeding to a distance of 5 Kms., from Palladam, the accused had asked P.W.1 to stop the car for the purpose of attending nature's call and the accused got down and on their return, one of the accused sat beside P.W.1 and the others sat on the back side and the accused, who had sat on the back side, caught hold of the neck of P.W.1 and rolled P.1 to the back of the seat and one of the accused sat in the driver seat and started driving the car. P.W.1 who was rolled to the back side, the other accused tied the hands and legs of P.W.1 and closed his mouth, eyes and ears with cello tape and, thereafter, proceeding further for about half an hour, the accused stopped the vehicle, took all the belongings of P.W.1, including the cash, mobile phone, driving licence, etc., and threw P.W.1 into the bushes



and fled away with the vehicle. Thereafter, removing the ropes from the hands and legs and removing the cello tape, P.W.1 went to the nearby public telephone and called P.W.12, who came to the place after one hour and, thereafter, P.W.1 and P.W.12 conversed with each other as to the manner in which the complaint has to be laid and, thereafter, Ex.P-1 had come to be lodged with the law enforcing agency.

40. A careful perusal of the deposition of P.W.1 and the complaint Ex.P-1 reveals material infirmities, which directly hits at the credibility of the evidence tendered by P.W.1. While on the one hand, Ex.P-1, which was given by P.W.1 in which P.W.12 was stated to be driving the vehicle, however, the deposition of P.W.1 before the Court gives a very different picture.

41. Though Ex.P-4, the FIR, which is the off-shoot of Ex.P-1 complaint is not an encyclopaedia in which all the information need not be given, but false information given in Ex.P-4 which is in stark contrast to the deposition of the author of the complaint definitely hits at the substratum of the evidence,



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thereby dislodging its credibility, which has to be duly considered while this Court considers the findings recorded while acquitting the accused.

42. Turning to the evidence of P.W.12, who is the brother-in-law of P.W.1, his evidence is also on similar lines as that of P.W.1. Further, P.W.12 has deposed that after conversing with the insurance advisor as to the manner in which the complaint has to be given, the complaint was given after P.W.1 and P.W.12 had discussed over the matter. Further, it is evident from the deposition of P.W.12 that P.W.1 not being possessed of the requisite badge to drive the vehicle, on the advice of the insurance advisor, P.W.12 had, after discussion with P.W.1, finalised the manner in which the complaint needs to be given so as to enable P.W.s 1 and 12 to relish the benefits through the said complaint.

43. When the evidence of P.W.s 1 and 12 is against the complaint, Ex.P-1 and Ex.P-4, the FIR, the veracity of the deposition of P.W.s 1 and 12 in court cannot be the basis to hold that it was the accused who had committed the offence.



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44. Further, certain other discrepancies are also writ large on the face of the record, which hits at the truth of the complaint. While P.W.1, in explicit terms had stated that upon P.W.1 being thrown in the bush by the accused, P.W.1 got released himself from the rope, which was used to tie his hands and legs and also get rid of the cello tape and throwing the same at the place where he was pushed out, had gone on to the police station to give the complaint. However, the said deposition of P.W.1 is not supported by the evidence of P.W.9, the Sub-Inspector of Police, who had recorded the FIR. P.W.9, had gone on to depose that the complaint given by P.W.1 was received by P.W.9, which was recorded, in which P.W.1 had subscribed his signature. P.W.9 had gone on to further depose that P.W.1 produced the bloodstained shirt, pant, two ropes and two cello tapes, which were alleged to have been used to tie him. This deposition of P.W.9 is contrary to the evidence of P.W.1, where P.W.1 had deposed that he had dropped the ropes and cello tapes at the place where he was pushed out. Though this aspect may appear to be a trivial contradiction, but coupled with the fact that P.W.1 had given contradictory complaint and deposition, to suit his convenience in connivance with P.W.12, this Court has to



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carefully take all the aspects into consideration before venturing upon interfering with the order of acquittal.

45. Coming to the question of test identification parade and its admissibility in evidence to hold that the accused had in fact committed the offence, a careful perusal of the deposition of P.W.1 in chief reveals that P.W.1 was pulled backwards and his hands and legs were tied and the accused had caused injuries on him and he had deposed that he was not able to see which accused had caused the injuries on him, yet, had identified the accused in the test identification parade.

46. According to P.W.1, he had seen the accused for the first time, when they were brought by P.W.3 for the purpose of engaging the taxi of P.W.1. P.W.1 was not aware about the details of the accused. To that end, P.W.1 had given evidence before P.W.10, the doctor, that he was attacked by unknown persons. However, even before P.W.10, P.W.1 has not stated that he was attacked by four unknown persons. Curiously, when the identity of the accused was not known to



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P.W.1, yet, according to the prosecution and the evidence of P.W.16, the Magistrate, P.W.1 had identified the accused in the test identification parade.

47. What is more intriguing is the fact that not only P.W.1, but P.W.12 has also identified the accused at the test identification parade. According to the deposition of P.W.s 1 and 12, P.W.12 had not seen the accused as it was only P.W.1, who was driving the taxi, when the accused manhandled P.W.1 and fled away with the taxi. Yet when P.W.12 was not even aware of the identity of the accused, P.W.12 had identified all the accused correctly in the test identification parade. Without P.W.12 not being made acquainted with the accused either in person or through photographs, identification of the accused by P.W.12 could not have been possible. This aspect casts a very serious doubt in the veracity of the prosecution version with regard to the identification.

48. In this regard, a perusal of the deposition of P.W.1, more particularly in cross examination, reveals that the photographs of the accused, who were alleged to have murdered a doctor in Dindigul were published in the newspapers, which was seen and read by P.W.1. Further, P.W.1 had deposed



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that only after a month and a half about the knowledge of the accused, the police authorities had summoned P.W.1 for identifying the accused in the test identification parade.

49. From the above deposition of P.W.1, this Court could very well draw an inference that the identity of the accused had come to the knowledge of P.W.1 only upon reading the newspaper in which the accused herein were alleged to have murdered a doctor at Dindigul. Once it becomes clear that the accused had seen the photographs of the accused prior to the test identification parade, the outcome of the test identification parade would not be of any avail to the prosecution as the said identification cannot be said to be based on the knowledge of P.W.1 on the occurrence date, but was posterior in point of time.

50. Further, as aforesaid, there is no material placed by the prosecution to establish the fact as to how P.W.12 had knowledge about the identity of the accused, when P.W.12 was nowhere in the scene at the crucial point of time as per the deposition of P.W.s 1 and 12.



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51. One other aspect which also rocks the version projected by the prosecution with regard to identification of the accused in the test identification parade is the fact that P.W.3, who had initially accepted to take the accused to Trichy, but due to certain immediate personal obligations, had requested P.W.1 to take them to Trichy, had brought the accused to the place where P.W.1 had parked his taxi. The identity of the accused was very much within the knowledge of P.W.3, yet, P.W.3 was not called upon by the investigating agency to identify the accused in the test identification parade. There is no reason attributed by the investigating agency for not calling upon P.W.3 to identify the accused in the test identification parade. This casts a very serious doubt not only in the version projected by the prosecution, but also the identification of the accused in the test identification parade.

52. As stated above, there are two versions, one projected through the deposition of P.W.s 1 and 12 and the other one projected by P.W.1 in Ex.P-1 complaint, which are mutually contradictory. When P.W.1 has given mutually contradictory versions on two occasions, no reliance can be placed either on the complaint or the deposition of P.w.1 by this Court to upset the finding rendered



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by the court below. Such being the case, placing reliance upon any of the versions projected by P.W.1 would be nothing but placing reliance on unreliable material and in the aforesaid backdrop, but for the evidence of P.W.1, there being no material connecting the accused with the commission of the offence, rightly appreciating the aforesaid facts and the materials available on record, the trial court has acquitted the accused, which cannot be said to be perverse or illegal.

53. The judgment of the trial court neither suffers from patent perversity nor the same is based on misreading/omission to consider material evidence on record and in the aforesaid scenario, the judgment of acquittal recorded by the trial court is the only plausible view that could be arrived at on the basis of the aforesaid materials, which has been rightly analysed by the Court below for acquitting the accused and, therefore, no interference is warranted with the well considered judgment recorded by the court below. Accordingly, the appeal fails and the same is dismissed.

26.04.2024



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Index : Yes / No

GLN



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To

1. The Principal District & Sessions Judge
Thiruppur.
2. The Public Prosecutor
High Court, Madras.
3. The Deputy Superintendent of Police
O.C.U – CBCID
Madurai City.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY JUDGMENT
ORDER**

**IN
CRL. A. NO. 248 OF 2021**



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**Pronounced on
26.04.2024**