



*Crl.O.P.No.5924 of 2024
in Crl.A.SR.No.10117 of 2024*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2024

CORAM :
THE HONOURABLE MR. JUSTICE M.S. RAMESH

and

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CRL.O.P.No.5924 of 2024
in Crl.A.SR.No.10117 of 2024

The Inspector of Police
Nagapattinam Town Police Station
Nagapattinam District
(Crime No.455 of 2020)

... Petitioner

Vs.

Gajendran

... Respondent

PRAYER in Crl.O.P.No.5924 of 2024 : Petition filed under Section 378 (4) of Cr.P.C, to grant leave to file an appeal to this Court against the acquittal judgment passed by the learned Principal Sessions Judge, Nagapattinam in S.C.No.56 of 2020 dated 28.02.2023.

PRAYER in Crl.A.SR.No.10117 of 2024: Appeal filed to grant leave to appeal before this Court against the judgment of the acquittal of the respondent / accused passed by the learned Principal Sessions Judge, Nagapattinam in S.C.No.56 of 2020, dated 28.02.2023.

For Petitioner : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER



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(Order of the Court was made by *SUNDER MOHAN, J.*)

The above Criminal Original Petition has been filed seeking leave of this Court to file an appeal against the Judgment of acquittal passed in S.C.No.56 of 2020 on the file of Principal Sessions Judge, Nagapattinam.

2. It is the case of the prosecution, that the deceased, aged about 73 years was living alone in his house, and that the appellant was working as a carpenter and became acquainted with the deceased as he was regularly doing carpentry work in the house, and that on account of a dispute with regard to payment of labour charges, the appellant caused the death of the deceased by strangulating him with an electric wire.

3. It is further the case of prosecution that PW2 was working as a cook in the house of the deceased; that she received a call around 8.30 p.m. from the deceased stating that the appellant was quarrelling with him; that when she had gone to meet the deceased at his residence at 9.00 p.m., the deceased instructed her to lodge a complaint against the appellant next day morning; that she left the house and came back to the house of the deceased on the next day morning at about 7.30 a.m. and



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found the house was locked; that she called the appellant, he picked up the phone and said hello and kept the phone; that thereafter, she went inside the house through the main gate and found the deceased dead under a bench with a wire around his neck; that she tried to contact PW1, who was the nephew of the deceased and since he did not pick up the phone, she requested PW6, her son to inform PW1; that PW1 thereafter lodged a complaint to the respondent police which was registered in Crime No.455 of 2020.

4. After conducting investigation, the respondent police filed a final report against the appellant. The prosecution had examined 18 witnesses and marked 17 Exhibits besides MO1 to MO11 to prove its case.

5. The prosecution sought to establish its case by circumstantial evidence. The circumstances relied upon by the prosecution was :

(a). Quarrel between the appellant and the deceased on the night of 07.05.2020, which was spoken to by PW2.

(b). The fact of appellant leaving the house of the deceased at 11.00



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p.m. on 07.05.2020 which was spoken to by PW3 and PW4.

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(c). The arrest, recovery of Rs.200/-, weapon and other articles are based on the confession of the appellant.

6. The trial Court, after considering the evidence had held that the prosecution had not established conclusively any of the circumstances. Though PW2 had stated about the quarrel, she had not stated about the nature of quarrel to establish the motive alleged by the prosecution. The trial Court, therefore, found that the prosecution had not established the motive. As regards the last seen theory, the trial Court found that both PW3 and PW4 were chance witnesses and cannot be believed as their presence was highly doubtful at the late hours on 07.05.2020. The inquest report revealed that PW2 was in the house of the deceased till 11.00 p.m. which falsifies the evidence of PW3 and PW4. Further, both PW3 and PW4 had not stated that they saw each other when the appellant left the house of the deceased. Likewise, the trial Court also disbelieved the recoveries made pursuant to the confession of the appellant.

7. Therefore, we are of the view that the reasons for acquittal are plausible and in any case it cannot be termed to be perverse so as to



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warrant an interference by this Court on appeal. In this regard, this Court
relies upon the observations of the Hon'ble Supreme Court which reads as
follows;

....

"7. In this context, it may be apposite to refer to the judgment of the Supreme Court in V. Sejappa vs. State, wherein, the parameters to be borne in mind by the Court while dealing with an appeal against acquittal have been broadly catalogued. The said parameters are profitably extracted hereunder:

?23. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as



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extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.?

8. In such view of the matter, we are of the view that this is not a fit case to grant leave to appeal against the acquittal. Accordingly, the



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Criminal Original Petition stands dismissed. Consequently, the
Crl.A.SR.No.10117 of 2024 stands rejected at the SR stage itself.

[M.S.R., J] [S.M., J]

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Index : Yes / No
Neutral Citation

M.S.RAMESH, J.
and
SUNDER MOHAN, J.

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