



CrI.A.No.346 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 20.06.2024

CORAM:

THE HONOURABLE **MR. JUSTICE M.DHANDAPANI**

CrI.A.No.346 of 2021

Ranganathan

...Appellant

Vs.

1. Paramasivam
2. Krishnamoorthy
3. Anna
4. Anbu
5. Arasu
6. Palaniyandi
7. Elangovan
8. Sivaraj
9. Gomathi
10. Alli
11. Navalavan
12. Pavalavan
13. State rep. by The Inspector of Police,
Kunnam Police Station,
Perambalur District.
(Cr.No.265 of 2014).



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...Respondents

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Criminal Appeal filed under Section 378 of Cr.P.C. 1973 to set aside the judgment dated 03.12.2020 made in S.C.No.55 of 2019 on the file of the Principal District and Sessions Judge, Perambalur and to convict the accused persons.

For Appellant : Mr.C.Prabakaran

For Respondents : Mrs.G.V.Kasthuri,
Additional Public Prosecutor, for R13

ORDER

This Criminal appeal has been filed by the appellant seeking quashment of the judgment dated 03.12.2020 made in S.C.No.55 of 2019 on the file of the Principal District and Sessions Judge, Perambalur and to convict the accused persons

2. The case of the appellant/defacto complainant is that, due to previous enmity, the respondents 1 to 12/accused persons, taking advantage of the absence of the appellant/defacto complainant P.W.1, illegally trespassed into the grove/garden in the appellant's house and damaged the



trees worth about Rs.20,000/- and stolen the same and when the same was questioned by the PW2 and PW3, who are the wife and daughter in law of the appellant/defacto complainant respectively, the accused persons, particularly, A9 and A10 threatened them with dire consequences used filthy language against them. Thereby, the appellant/ defacto complaint laid the complaint before P.W.6, the Inspector of Police of Kunnam Police Station, which was registered in Crime No.265/2014 for the offence u/s 147, 148, 427, 294(b), 323 & 506 (i) of IPC and the P.W.6, took up investigation and on reaching the scene of occurrence on 07.08.2014 at about 12.00 pm, prepared the observation mahazar and drew the rough sketch, Exs.P-2 and P-5 and also examined the witnesses PW1 to 5 & PW7 and other witnesses and recorded their statements. Thereafter, P.W.6 obtained the certificate with regard to the loss caused and after collecting all the materials, P.W.6 filed the final report before the court against the respondents 1 to 12, altering the offences to Section 147, 148, 427, 294(b), 323 & 506 (i) of IPC and 3 of PPDL Act. To establish the charges levelled against the accused, the prosecution examined P.W.s 1 to 7 and marked Exs.P-1 to P-6. On completion of the evidence on the side of the prosecution, the accused were



questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them in the evidence tendered by the prosecution witnesses. They denied all the incriminating circumstances. On the side of the defence, neither any oral evidence was adduced nor any documents were marked. The trial court, on consideration of oral and documentary evidence and other materials, acquitted the accused persons and aggrieved by the said order, the present appeal has been filed by the appellant.

3. Learned counsel appearing for the defacto complainant/appellant submitted that the court below has grossly erred in acquitting the respondents. It is the further submission of the learned counsel that the trees cut down by the accused have been spoken to by the appellant and the previous enmity has also been spoken to by the appellant. It is the further submission of the learned counsel that the trespassing of the accused into the lands of the appellant and cutting the trees and the value of the trees so cut have also been spoken to by P.W.5. When there is clear evidence with regard to the trespass and the value of the trees damaged, the court below ought to have convicted the persons, however, has erroneously acquitted the



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accused, which requires to be interfered with by this Court.

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4. Heard the learned Additional Public Prosecutor appearing for the 13th respondent on the above contentions.

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

6. 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*



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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, 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



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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)

7. 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.

8. 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 or whether there are materials, which warrants grant of leave by this Court.

9. The fact that the trees have been felled down in the lands of the appellant towards which a case was registered on the basis of Ex.P-1 complaint and registration of FIR, Ex.P-4 and preparation of Ex.P-2, the observation mahazar. Further, Ex.P-3, is the valuation certificate issued with regard to the felled trees. There is no quarrel with regard to the same. However, it is to be noted that P.W.s 1 to 3 are related witnesses of which P.W.1 is the defacto complainant. In fact, it is the evidence of P.W.1 that on the date when the trees were alleged to have been felled by the accused, P.W.1 had gone out of station. It is the evidence of P.W.2 & P.W.3 that they were at home when the trees were felled by the accused. They had thereafter called P.W.1 over phone and informed the same and P.W.1 returned home the same day and then lodged a complaint.



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10. Though it is the case of P.W.2 that complaint was lodged by P.W.1 on the same day, however, it is borne out by record that the complaint was lodged two days after the alleged day of felling. There is no whisper from the prosecution or by the appellant as to why there is a delay in

lodging the complaint, though it is the specific case of the appellant that P.W.s 1 and 3 had returned the very same day.

11. Further, it is to be pointed out that though the accused persons are alleged to have trespassed into the lands of the appellant and felled the trees, yet, P.W.2 & 3, who have stated that they confronted the accused and they beat them and pushed them down, had not raised any alarm. This Court is at a loss to understand as to why P.W.2 & 3 have not raised any alarm, and there is no explanation offered in this regard by P.W.2 & P.W.3.

12. In the absence of P.W.2 & P.W.3 raising any alarm and calling for



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help, moreso, when the accused are alleged to have used poclain to remove the trees and the fact that there is delay of two days in lodging the complaint, coupled with the fact that it is the evidence of P.W.1 that there exists previous enmity between the appellant and the accused, the aforesaid infirmities in the evidence and the delay in lodging the complaint stares writ large on the case projected by the appellant and rightly appreciating the above, the court below has acquitted the accused/respondents 1 to 12, which cannot be said to be erroneous.

13. Accordingly, for the reasons aforesaid, no interference is warranted with the acquittal recorded by the trial court and the present appeal fails and the same is dismissed confirming the judgment of acquittal passed by the learned Principal District & Sessions Judge, Perambalur, dated 3.12.2020 passed in S.C. No.55 of 2019.

20.06.2024

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Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

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To
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1. The Principal District and Sessions Judge,
Perambalur.
2. The Public Prosecutor
High Court, Madras.
3. The Inspector of Police,
Kunnam Police Station,
Perambalur District.

M.DHANDAPANI, J.

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