



CrI.A.No.461 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.04.2024

CORAM:

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

CrI.A.No.461 of 2024

Thangarasu

...Petitioner

Vs.

1. State Rep. by
The Inspector of Police,
Kairlabath Police Station,
Ariyalur District.
2. Muruganantham
3. Veerakarthikainathan
4. Vembu
5. Elamvazhuthi @ Thangarasu

...Respondents

Criminal Appeal filed under Section 372 of Code of Criminal Procedure to call for the records and set aside the acquittal order passed by the Principal District and Sessions Judge, Ariyalur in S.C.No.66 of 2021 dated 19.12.2023.

For Petitioner : Mr.K.Gandhikumar

For Respondents : Mrs.G.V.Kasthuri
Additional Public Prosecutor



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JUDGMENT

WEB COPY The appellant has come up with this Criminal Appeal seeking quashment of the order passed by the Principal District and Sessions Judge, Ariyalur in S.C.No.66 of 2021 dated 19.12.2023.

2. The case of the prosecution is that, the respondents 2 to 4, (hereinafter referred to as the accused persons) illegally trespassed into the appellant's provisions shop and damaged the door and grocery items in the provision store and also scolded the appellant/defacto complainant in a filthy language and the accused persons have attacked the appellant and his wife with weapons such as sickle, iron pipe and wooden log, due to which, the appellant and his wife sustained injuries. Thereby, he lodged a complaint against the accused persons before the law enforcing agency.

3. The law enforcing agency, upon receiving the complaint, Ex.P-1, registered a case in Cr.No.218 of 2017 against the accused for the offences under Section 294(b), 324, 427, 448, 506(ii) of IPC and Section 3(i) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. Taking up investigation, P.W.10, the Inspector of Police, reached the scene of



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occurrence and prepared observation mahazar, Ex.P-2 and prepared rough sketch, Ex.P-5. Thereafter, the investigating officer examined the witnesses and recorded their statements. The accused were arrested and sent for judicial remand. Upon completion of investigation, P.W.10 filed the final report against the accused for the offence aforesaid. The case was taken on file in PRC.No.06 of 2021 by the Judicial Magistrate No.I, Ariyalur and the case was committed to Principal District and Sessions Judge and taken on file in SC.No.66 of 2021.

4. To prove the case, the prosecution examined P.W.s 1 to 10 and marked Exs.P-1 to 5. When the accused were questioned u/s 313 Cr.P.C. on the incriminating circumstances appearing in the evidence tendered by the prosecution witnesses, they denied the same as false. However, neither oral nor documentary evidence was adduced on the side of the defence. On consideration of the oral and documentary evidence, the trial court acquitted the accused persons. Aggrieved over the said acquittal, the appellant has come up with this Appeal.



5. Learned counsel for the appellant submitted that, in order to prove the prosecution case, the prosecution examined P.W.s 1, 2, 5 and 8, who are all eye witnesses to the occurrence, who have clearly deposed the manner in which the accused attacked and the abusive language used by the accused persons, and their evidence is sufficient to convict the accused persons. Further, in order to prove the injuries sustained by the appellant and his wife, though the Doctor who treated them at the relevant point of time was examined as PW7, who clearly stated the nature of injuries sustained by the appellant and his wife, however, the same was not considered by the trial court. Though the offences under Section 294(b) and 324 of IPC were clearly established before the trial court, even then, the trial court had acquitted the accused persons, vide impugned judgment, which is not sustainable. Further, no contra evidence has been adduced by the accused in order to disprove the case of the appellant. While so, in the absence of any contra evidence, the Trial court ought to have convicted the accused persons based on the oral and documentary evidences submitted by the prosecution. Accordingly, he prayed for appropriate orders.



6. In spite of service of notice, none appeared for the respondents 2 to

5. In such circumstances, this Court, in view of the order, which it proposes to pass, is inclined to decide the issue on the basis of the available records.

7. Heard learned counsel for the appellant and perused the materials available on record.

8. 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 Sahebagoada Rudragoudar & Ors. – Vs – State of Karnataka (C.A. No.985/2010 – Dated – 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***



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[Chandrappav. 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 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



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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;



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(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)***

9. 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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10. 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.

11. Admittedly, the appellant/de-facto complainant made a complaint as against the accused persons in Cr.No.218 of 2017 for the offences punishable under Section 294(b), 324, 427, 448, 506(ii) of IPC and Section 3(i) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992.

12. The accused were charged u/s 294(b) IPC. To establish the ingredients of Section 294(b), there must be necessary materials to show that obscene words and utterances were made by the accused, which disturbed the peace of the locality and the residents of the locality. However, in the case on hand, there is no material to infer that the ingredients of Section 294(b) IPC are attracted. In this regard, useful reference can be had to the decision of the Apex Court in *N.S.Madhanagopal & Anr. –Vs– K.Lalitha (2022 Live Law (SC) 844)*, wherein the Apex Court, in



categorical terms has held that *mere abusive or defamative words by itself cannot attract an offence u/s 294 (b) IPC. To prove the offence u/s 294 IPC mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others. The test of obscenity u/s 294 (b) IPC is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences.*

13. In the present case on hand such a evidence is not available as against the accused persons. Such being the case, there would be no scope for the prosecution to prove that it had caused annoyance to others. That being the case, the ingredients of Section 294 IPC would not stand attracted to the act of the accused persons and thereby, this Court is of the view that, the trial court had rightly acquitted the accused persons of the said offence.

14. The next contention of the appellant is that the offences alleged against the accused have been established before the trial court, yet the trial court has erroneously acquitted the accused. In this regard, a perusal of the Accident Register, Ex.P-3 reveals that P.W.1 had informed the doctor,



P.W.7 that he was attacked by more than 25 persons, yet in the complaint,

Ex.P-1, P.W.1 had stated that he was attacked by four persons in his shop with the use of aruval. There is total contradiction between Ex.P-1 and Ex.P-3 with regard to the manner of the incident and also the weapon used in the incident.

15. The aforesaid contradiction coupled with the fact that the complaint, Ex.P-1 was given after a delay of 10 days creates a grave doubt with regard to the incident and also the manner in which the incident is alleged to have taken place. There is no plausible explanation, except for the treatment taken by P.W.1 and 2 at the hospital, which has resulted in the delay.

16. Further, the evidence of P.W.5 is not in corroboration with the evidence of P.W.s 1 & 2. The evidence of P.W.5 runs in total contradiction to the evidence of P.W.5. Similarly, the evidence of P.W.8 is also contradictory to the evidence of P.W.1. Further, one other aspect, which also assumes significance is the fact that it is the case of the prosecution that the shop of P.W.s 1 & 2 was extensively damaged by the accused. Yet to prove



the same, the prosecution has not filed any photographs to show the extent of damage caused to the shop of P.W.s 1 & 2. Further, it is the claim of P.W.s 1 & 2 that they were attacked with aruval, iron pipe and wooden logs, however, the prosecution have not seized any weapon, alleged to have been used in the offence and marked the same before the court.

17. All the aforesaid contradictions in the deposition of the witnesses, coupled with the non-submission of documentary evidence relating to the damage caused to the shop and also the weapon of offence not being produced before the court, the abovesaid discrepancies in the prosecution case, paints a picture that all is not well with the prosecution and that the case as projected against the accused have not been proved beyond a pale of doubt. In fact, the very genesis of the occurrence is doubtful, as the complaint was lodged after a period of 10 days and there is no proper explanation for the delay.

18. Considering all the aforesaid materials in proper perspective, the court below has rightly acquitted the accused, as the prosecution had miserably failed to prove the case against the accused. Therefore, the court



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below had acquitted the accused, which is just and reasonable and the said acquittal warrants no interference.

19. For the reasons aforesated, this Criminal Appeal fails and the same stands dismissed confirming the judgment of acquittal passed by the court below.

24.04.2024

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

To

1. The Principal District and Sessions Court,
Ariyalur
2. The Public Prosecutor
High Court, Madras.
3. The Inspector of Police,
Kairlabath Police Station,
Ariyalur District.

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