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CrL.A.No.842 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2024

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

CrL.A.No.842 of 2019

M.Rajasekar

... Appellant/Defacto complainant

v.

State represented by

1. Inspector of Police,
E-1 Mylapore Police Station,
Chennai.

(Crime No.2746 of 2015)

... Respondent/Complainant

2. Sankara Pandiyan

... Respondent/Accused

Criminal Appeal filed under Section 372 of Code of Criminal Procedure, 1973, against the judgment of acquittal passed in S.C. No.54 of 2017 dated 05.08.2019 on the file of the learned XVIII Additional Sessions Judge, City Civil Court, Chennai.

For Appellant : Mr.J.Asokan

For 1st Respondent : Ms.A.Shahana Fathima
for Additional Public Prosecutor



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For 2nd respondent : Mr.S.T.Raja

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JUDGMENT

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

This Criminal Appeal has been filed by the defacto complainant accused challenging the judgment of acquittal dated 05.08.2019 made in S.C.No.54 of 2017 on the file of the learned XVIII Additional Sessions Judge, City Civil Court, Chennai.

2(i) It is the case of the prosecution that the 2nd respondent/accused is the father-in-law of the victim-PW1; that his daughter and the victim-PW1 got married four months before the occurrence; that his daughter got separated from PW1, since PW1 did not treat her daughter properly; that the 2nd respondent, who was working as a Security Officer and was in possession of a gun, called PW1 for a discussion and there was a quarrel and the 2nd respondent is said to have shot at PW1 three times, out of which, PW1 suffered two gun shot injuries.

(ii) It is the further case of the prosecution that PW1 along with his



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wife PW2 was taken to the hospital; that the victim-PW1 called his friend one Vignesh, who was practising as a Lawyer, for his assistance; and that on the intimation given by the hospital authorities, the respondent police visited the hospital and took his complaint; and that the complaint was written by his Lawyer-Vignesh, on his instructions. The said complaint was marked as Ex.P1.

(iii) PW15, the Sub Inspector of Police, on receipt of the complaint, registered the FIR [Ex.P1] at about 11.30 p.m., in Crime No.2746 of 2015 for the offences under Section 307 of the IPC and Section 27 of the Arms Act. Thereafter, PW16, the Inspector of Police, took up the investigation, went to the scene of the occurrence and arrested the 2nd respondent, who was detained by the public gathered at the scene of the occurrence. He also seized the 9mm Pistol Magazine [M.O.6] from the possession of the 2nd respondent under Seizure Mahazar [Ex.P10]. He seized the other bullets [M.O.7]. After sending the seized articles for ballistic expert examination, he examined the doctor who treated the victim and other witnesses and filed the final report for the offences under Section 307 of the IPC read with



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Section 27 of the Arms Act, against the 2nd respondent/accused, before the learned XVIII Metropolitan Magistrate Saidapet, Chennai.

(iv) On the appearance of the 2nd respondent/accused, the provisions of Section 207 Cr.P.C., were complied with and was committed to the Court of Session in S.C.No.54 of 2017 and was made over to the learned XVIII Additional Sessions Judge, City Civil Court, Chennai, for trial. The trial Court framed charges under Section 307 of the IPC read with Section 27 of the Arms Act, against the 2nd respondent/accused, and when questioned, the 2nd respondent/accused pleaded 'not guilty'.

(v) To prove the case, the prosecution examined 16 witnesses as P.W.1 to P.W.16, marked 14 exhibits as Exs.P1 to P14, and marked 7 Material Objects as M.O.1 to M.O.7. When the 2nd respondent/accused was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The 2nd respondent/accused did not examine any witnesses, but marked two exhibits Ex.D1 and Ex.D2.



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(vi) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had not established its case beyond reasonable doubt and accordingly, acquitted the 2nd respondent/accused. Hence, the victim-PW1, has preferred the appeal challenging the said judgment of acquittal.

3. Heard, Mr.J.Asokan, learned counsel appearing for the appellant; Ms.A.Shahana Fathima, learned counsel appearing for the 1st respondent/State and Mr.S.T.Raja, learned counsel for the 2nd respondent/accused

4. (i) The learned counsel for the appellant submitted that the finding of the trial Court is perverse and had ignored vital evidence, which calls for interference by this Court.

5. (i) The learned counsel for the 2nd respondent/accused submitted that the trial Court had given as many as twelve reasons for acquittal and this Court may not entertain this appeal as the reasons are plausible.



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6. We have carefully considered the rival submissions and have perused all the relevant records.

7. The learned trial Judge, after analysing the evidence let in on the side of the prosecution, has given as many as twelve reasons for disbelieving the prosecution case. From the reading of the evidence and the judgment of the trial Court, it is seen that the version of the victim that the accused shot at him three times, out of which he sustained injuries due to two shots, is improbable. The evidence of the doctor, Ex.P8-Discharge summary and Ex.P14-Accident Register of the victim, suggests that the victim had sustained only one gunshot injury and the injuries found on him were one entry wound and one exit wound.

8. PW16, the investigating officer, was cross examined on this aspect, who had deposed that though, the medical evidence suggests that there was one gunshot injury, that resulted in a entry wound and an exit wound, the investigation suggested that the bullet due to the 2nd gunshot injury also came through the same exit wound. The ballistic expert-PW12 who was



competent to depose about the possibility of two bullets piercing through the same hole, had stated that it was impossible. The medical evidence as well as the ballistic opinion belie the prosecution case and the evidence of PW1 as regards the exact manner of occurrence.

9. PW2 the daughter of the 2nd respondent/accused had deposed in her evidence that the victim was the aggressor, and he took away the gun from the 2nd respondent/accused and threatened him and that there was a scuffle and it was an accidental firing. PW2, was treated as hostile. Even if this Court ignores the evidence of PW2, as she had supported the 2nd respondent/accused, who was her father, the improbability in the version of the prosecution case, which is contrary to the medical evidence and the ballistic opinion, cannot be ignored.

10. That apart, the trial Court also had referred to the evidence of PW12, who had stated that since the dress materials of the victim and the 2nd respondent/accused were sent belatedly and that because of the said delay, there was a possibility of error in his findings as 'GSR particles, i.e. Gun



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Shot Residues' can be erased due to the efflux of time. The learned Judge therefore, disbelieved the version of PW12 that the victim was shot at a distance of one metre. The learned judge had also noted that the statements of PW1 and PW2 reached the Court belatedly and that the FIR was also despatched to the Magistrate belatedly.

11. Further, the learned trial Judge also found that the prosecution case with regard to the time at which the FIR was registered is improbable, since the victim was then undergoing surgery. That apart, the learned Judge also had found that the doctors, who made entries in the Accident Register were not examined by the prosecution and therefore, an adverse inference can be drawn against the prosecution.

12. Interestingly, the learned Judge has also noted that though the final report, is said to have been filed by PW16 and his signature is found in the said final report, PW16 himself denied the signature in the final report and stated that his signature was affixed by one Ravikumar by mistake, which confirmed that PW16 had not filed the final report.



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13. This Court finds that the other reasons given by the trial Court for acquitting the 2nd respondent/accused are plausible and no interference is called for. It is well settled that even if two views are possible, the finding of acquittal cannot be reversed, unless it is perverse.



14. In *Union of India v. Pravat Kumar Behuria*, reported in (2019)

10 SCC 220, the Hon'ble Supreme Court has held as follows:

“14. It is trite law that judgments of acquittal should not be disturbed unless there are substantial or compelling reasons. The substantial or compelling reasons to discard a judgment of acquittal were examined by this Court in *Ghurey Lal v. State of Uttar Pradesh* [(2008) 10 SCC 450] which are as follows:

“70....1.

- i) The trial Court's conclusion with regard to the facts is palpably wrong;
- ii) The trial Court's decision was based on an erroneous view of law;
- iii) The trial Court's judgment is likely to result in "grave miscarriage of justice";
- iv) The entire approach of the trial Court in dealing with the evidence was patently illegal;
- v) The trial Court's judgment was manifestly unjust and unreasonable;
- vi) The trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.
- vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial Court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts /appellate Courts must rule in favour of the accused.”



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15. This Court finds no perversity in the finding and therefore, not inclined to interfere with the judgment of acquittal in S.C. No.54 of 2017 dated 05.08.2019, on the file of the learned XVIII Additional Sessions Judge, City Civil Court, Chennai and the same is confirmed. The Criminal Appeal stands dismissed, accordingly.

12.07.2024

Index : yes/no
Speaking /Non-speaking order
Neutral citation : yes/no
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SUNDER MOHAN,J.

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To

1. The XVIII Additional Sessions Judge,
City Civil Court, Chennai.

2. The Inspector of Police,
E-1 Mylapore Police Station,
Chennai.

3. The Public Prosecutor,
High Court, Madras

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