



Crl.A.No.701 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>07.08.2024</i>
<i>Pronounced on</i>	<i>23.08.2024</i>

CORAM :
THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

Crl.A.No.701 of 2018

Devu Chandrakala

... Appellant/P.W.1

Vs.

1.The Inspector of Police,
CBCID Police Station,
Puducherry,
(Cr.No.173 of 2011 of Yanam Police Station). ... Respondent/State

2.Suresh Babu

3.Meeraiah

4.Sangadi Srinivasu

5.M.V.V.Sathya Narayana

6.Kadali Srinivasa Rao ... Respondents/Accused 1 to 5

PRAYER: Criminal Appeal filed under Section 378 (1) of the Criminal Procedure Code to call for the records relating to the judgment of acquittal passed in S.C.No.83 of 2012 on the file of the II Additional Sessions Judge at Puducherry dated 20.01.2017 are to set aside the same.



Crl.A.No.701 of 2018

For Appellant : Mr.S.Doraisamy

For Respondent 1 : Mr.K.S.Mohan Das,
Public Prosecutor (Puducherry)

For Respondent 2 : Mr.R.John Sathyan,
Senior Counsel
for Mr.P.Divakar

For Respondent 3 : Mr.M.R.Thangavel

For Respondents 4 & 5 : Mr.M.Mugesh

For Respondent 6 : Mr.B.Bala Vijayan

JUDGMENT

C.KUMARAPPAN,J.

The instant Criminal Appeal is arising out of an order of acquittal passed in favour of accused 1 to 6 in S.C.No.83 of 2012 dated 20.01.2017. The accused 1 to 5 are the police personnel, attached with Yanam Police Station, Puducherry.

2. The necessary facts which are relevant for consideration of this appeal is as follows. On 09.11.2011, the deceased/victim Devu Sattibabu told her wife viz., Devu Chandrakala (P.W.1) that he would leave Kakinada. However, on the next day, she came to know that her husband was arrested



by the accused 1 to 5 and were kept in the Police Station. Whiles, the P.W.1 with her sister-in-law, who is the P.W.2 has visited the Police station and confirmed that her husband was in the police station. When she saw her husband at the police station, his legs were chained and tied to the window. It is the further case of the prosecution that they have tortured him. Not able to withstand the torture, he had consumed poison, and subsequently succumbed to the poison. The police initially did not register any FIR. However, after the protest and dharna spearheaded by the wife and relatives of the deceased, an FIR in Cr.No.172 of 2011 was registered under Section 174 of Cr.P.C.

3. Subsequently, the said FIR has been forwarded to the CBCID and the investigation was taken up by P.W.27-Sundaramoorthy. Immediately, on taking up the investigation, he proceeded to the hospital and conducted an inquest on the body of the deceased, and also examined the some of the witnesses. After examining the witnesses viz., Sathiyarayanan, Kadalee Srinivasarao, Padugo Balaraman, Meeraiya, Mohammed Abdul Rachide and others, he requested the Station House Officer of the Yanam Police Station to furnish the records in Crime No.172 of 2011. He has also examined the



Village Administrative Officer and recorded his statement. On the basis of the statement of the witnesses and on records, he altered the FIR from Section 174 Cr.P.C to Section 342, 199, 201, 302 r/w 34 of I.P.C against the accused.

4. On 26.12.2011, he has also sent the alteration report and the entire file has been forwarded to the Chief Judicial Magistrate. He further states that he has also visited the scene of occurrence and prepared rough sketch and mahazar, and he has also seized handcuff along with leading chain. All those Mos' have been forwarded to the Chief Judicial Magistrate under Form – 95. On 06.01.2012, he has sent a requisition to the Public Health Laboratory to cause production of viscera report of the deceased. He has also examined the Executive Magistrate, Doctors. On 20.04.2012, he obtained sanction to prosecute the accused and thereafter, he has conducted an identification parade and ultimately, he laid charge sheet against all the accused.

5. Before the Trial Court, the prosecution has relied on as many as 27 witness and 11 documents and 2 material objects. The Trial Court after having considered the oral and documentary evidences, has ultimately found



that the prosecution has miserably failed to prove the charge against the accused. Aggrieved with the said findings, the de-facto complainant, who is the wife of the deceased has filed the instant Criminal Appeal against the order of acquittal.

6. Before we delve into the merits of the matter, it is appropriate to understand the legal position about the powers of the Appellate Court, under Section 378 (1) of Cr.P.C, while dealing with the appeal against the order of an acquittal. It is a well settled principle of law that after the accused succeeded in trial and obtained an order of acquittal, the presumption of innocence of the accused is further strengthened. It is also a well settled principle of law that, in the appeal against acquittal, the Appellate Court can review the entire evidence, and come to its own conclusion. However, if the Appellate Court proceeds to reverse the acquittal, on re-appreciation of evidence, there is a duty cast upon the Court to address all the ratiocination given by the Trial Court and has to demonstrate as to how those findings are illegal, perverse or, error of law or facts. Unless the Appellate Court demonstrates the perversity or illegality of the order of Trial Court, as stated supra, since because there exist an another possible view cannot be a ground



to interfere with an already recorded possible view of the Trial Court as the Trial Court has the advantage to see and examine the demeanour of the witnesses.

7. In this regard, it is useful to refer the following judgments.

(i) In the case of Atley Vs. The State of Uttar Pradesh, reported in AIR 1955 SC 807:

*“... 8. It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on a mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417 of the Cr PC came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order. It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence. **It is also well settled that the Court of appeal has as wide powers of***



WEB COPY



CrI.A.No.701 of 2018

appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal. If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this connection the very cases cited at the Bar, namely, Surajpal Singh v. State¹; Wilayat Khan v. The State of Uttar Pradesh. In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions.”

(Emphasis supplied by this Court)

(ii) In the case of Pulicherla Nagaraju @ Nagaraja Reddy Vs., State of Andhra Pradesh, reported in 2006 11 SCC 444:

“... 15. It is now well settled that the power of the High Court in an appeal from acquittal is no different from its power in an appeal from conviction. It can review and consider the entire evidence and come to its own conclusions by either accepting the evidence rejected by the trial court or rejecting the evidence accepted by the trial court. However, if the High Court decided to depart from the conclusions reached by the trial court, it should pay due attention to the grounds on which acquittal was based and state the reasons as to why it finds the



conclusions leading to the acquittal, unacceptable. It should also bear in mind that (i) the presumption of innocence in favour of the accused is fortified by the findings of the trial court; (ii) the accused is entitled to benefit of any doubt; and (iii) the trial court had the advantage of examining the demeanour of the witnesses. The crux of the matter, however, is whether the High Court is able to give clear reasons to dispel the doubt raised, and reject the reasons given by the trial court. (See Sher Singh v. State of U.P. [(1967) 2 SCR 727 : AIR 1967 SC 1412 : 1967 Cri LJ 1213] , Dargahi v. State of U.P. [(1974) 3 SCC 302 : 1973 SCC (Cri) 928 : AIR 1973 SC 2695] , Ravinder Singh v. State of Haryana [(1975) 3 SCC 742 : 1975 SCC (Cri) 202 : AIR 1975 SC 856] and Labh Singh v. State of Punjab [(1976) 1 SCC 181 : 1975 SCC (Cri) 812 : AIR 1976 SC 83] .)”

(Emphasis supplied by this Court)

(iii) In the case of Muralidhar @ Gidda & Another Vs., State of Karnataka, reported in 2014 5 SCC 730:

“... 12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu [Tulsiram Kanu v. State, 1951 SCC 92 : AIR 1954 SC 1 : 1954 Cri LJ 225] , Madan Mohan Singh [Madan Mohan Singh v. State of U.P., AIR 1954 SC 637 : 1954 Cri LJ 1656] , Atley [Atley v. State of U.P., AIR 1955 SC 807 : 1955 Cri LJ 1653] , Aher Raja Khima [Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217 : 1956 Cri LJ 426] , Balbir Singh [Balbir Singh v. State of Punjab, AIR 1957 SC 216 : 1957 Cri LJ 481] , M.G. Agarwal [M.G. Agarwal v. State of Maharashtra, AIR 1963 SC



200 : (1963) 1 Cri LJ 235]: 2005 SCC (Cri) 1237] , Sanjay Thakran [State of Goa v. Sanjay Thakran, (2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] and Chandrappa [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] . It is not necessary to deal with these cases individually. 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 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**



WEB COPY



CrL.A.No.701 of 2018

(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.

(Emphasis supplied by this Court)

8. Therefore, it is a well settled principle of law, that, while re-appreciating the evidence if the Appellate Court forming yet another possible view cannot be a ground to dislodge the existing possible view of acquittal, already arrived by the Trial Court, unless the Appellate Court demonstrate that the view expressed by the Trial Court is palpably wrong, or based on erroneous view of law, or of such conclusion likely to result in grave injustice. With the above legal principle, let us proceed to re-appreciate the evidence.

9. In the present case, the prosecution is very much relying upon the evidence of P.W.1 to P.W.3 to prove their case. P.W.1 to P.W.3 are the wife, sister and brother-in-law of the deceased respectively.

10. Learned counsel for the appellant Mr.S.Doraisamy would



vehemently contend that the prosecution has systematically de-stabilized their case to assist the accused, as all the accused are the police personnel. The learned counsel would further contend that whenever any custodial death happened, it is mandatory to conduct an enquiry through the Judicial Magistrate as provided under section 176 sub clause 1A of the Cr.P.C. It was also the contention of the learned counsel for the appellant that the very transmitting of the complainant and other documents to the Jurisdictional Magistrate Court were deliberately delayed by the prosecution. Therefore, it is the contention of the learned counsel for the appellant that at every stage, the prosecution has systematically de-stablized the prosecution case and ultimately saw to it that the accused are being acquitted. Therefore, contended that order of acquittal would result in grave injustice, hence prayed to set aside the same.

11. The learned counsel for the appellant further contended that their specific case is that the deceased's leg was chained while he was in the Police Station, and that he was not provided with food and furthermore, he has been beaten up by the accused 1 to 5 Therefore, not able to bear all these torture, he consumed the poison, which was kept near to him in the Police Station.



Thus, it is the contention of the learned counsel for the appellant that it is a fit case that the acquittal order should be reversed and prayed to punish the accused.

12. Per contra, Mr. John Sathyan, learned senior counsel, who is appearing on behalf of the A1 would vehemently contend that the Trial Court has found that the arrest and custody of the deceased could not be believed from the evidence of P.W.4. The learned Senior counsel further contended that even according to the P.W.18-Postmortem Doctor, there are no external injury found in the body of the deceased. Apart from that the learned Senior Counsel would further submit that the doctor P.W.17, who initially treated the deceased, has recorded in the accident register that the deceased has consumed poison at his residence. Learned senior counsel would also further contend that the landlord of the deceased has also spoken that the deceased had quarrel with his wife and has consumed poison. Therefore, it is the contention of the learned senior counsel that the view arrived by the Trial Court is the only possible view and therefore under Section 378 (1) of CR.P.C., this Court cannot interfere with the well considered findings of the Trial Court.



WEB COPY

13. In line with the submissions of the learned senior counsel, the counsels appearing for the other accused have also contended that the prosecution has miserably failed to prove the charges beyond reasonable doubt. Hence, would contend that no grounds surfaces in the instant appeal to reverse the finding of the Trial Court.

14. We have given our anxious consideration to either side submissions.

15. Though it was contended that there was no magisterial enquiry under Section 176 (1A) of the Cr.P.C, when the appellant themselves participated in the trial without expressing any demur in respect of such non-conduct of the magisterial enquiry, it is too late in the day to raise such contention at the first instance before the Appellate Court. Besides, the object of Section 176 (1A) of Cr.P.C., is to find out the cause of death. Here in the case in hand, as suspected by the de-facto complainant the FIR under Section 174 of Cr.P.C., was altered to Section 302 of IPC. Therefore, in the above



factual position, the absence of magisterial enquiry has no significance and the same cannot be construed as palpably wrong procedure to vitiate the trial.

16. Even according to the submission made by the learned counsel for the appellant, the only allegation which they made in support of their case is that the deceased was forced to consume the poison, as he could not bear the torture meted by him. According to the learned counsel for the appellant, the alleged torture are, he has been beaten up by the police, and he was chained in his leg. But as rightly contended by the learned counsel for the accused, according to the postmortem doctor P.W.18 there were no external injury on the body of the deceased.

17. At this juncture, the learned senior counsel appearing on behalf of A1 would rely upon the accident register of the deceased, wherein the deceased has stated to the doctor that he has consumed poison at his residence. Apart from that, learned senior counsel would also rely upon the evidence of P.W.5 and P.W.6 qua the revenue officials. According to their evidence, the body was not at all in the police station and same was found near the Indira Gandhi Statue, Bheem Nagar. Furthermore, even according to



the statement of P.W.14, who is the Sanitary Assistant of the police station, on the relevant dates i.e., 09.11.2011, 10.11.2011 and 11.11.2011 though she found that all the accused were working in the police station, did not see the deceased Devu Sattibabu in the police station. Therefore, the findings recorded by the Trial Court that there is no proof for arrest and the custody of the deceased at police station, or the presence of the body of the deceased at the police station, cannot be held to be without evidence at all.

18. Though the learned counsel has raised apprehension regarding the delay in forwarding of the documents from the police station to the concerned jurisdictional Magistrate, the same could only favour the accused and not the prosecution. More pertinently, the evidence of the P.W.17 Doctor, who initially treated the deceased, unequivocally stated that on 11.11.2011 at about 5 – 6 p.m, the deceased Devu Sattibabu was brought to the hospital by two male persons and the deceased informed to him that he had consumed poison at about 5.10 p.m. at his residence. However, inspite of treatment, he died at 7.30 p.m. on 11.11.2011.

19. Even the post-mortem doctor, who was examined as P.W.18 has



stated that no external injury on eyes, and no sub conjunctival hemorrhage are present and there were no injury or fracture was found. However, he has given his final opinion that he died because of consumption of poison. Thus, if we look at the evidence of P.W.18- post-mortem doctor in the back ground of the revenue officials evidence qua P.W.5 and P.W.6, the deceased body was not found in the police station but from only near the Indira Gandhi Statue, Bheem Nagar.

20. More pertinently, even while perusing the evidence of P.W.1, qua the wife of the deceased, when her sister in law met the deceased on 10.11.2011 at the police station, he did not complain about any torture, but he only asked her to come again on next day with children. Further, during the cross examination, the P.W.1 has admitted that she has not raised any allegation against the police. Therefore, only in such background the Trial Court by heavily relying upon the evidence of the doctor, who has given treatment viz., P.W.17-Dr.Jayasree, and P.W-14 - the Sanitary Assistant, who spoke absence of the deceased in the police station, has found that the prosecution has miserably failed to prove the charge against the accused beyond reasonable doubt. The Trial Court has also, by relying upon the



evidence of P.W.5 and P.W.6, doubted the arrest and custody of the deceased.

21. Thus, this Court is of the firm view that the findings recorded by the Trial Court is the only possible view and those findings have been taken based upon the evidence available on record. Such finding cannot be brought within the parameter of palpably wrong finding or a finding with error in law or facts. Though the learned counsel for the appellant would raise so many apprehensions in the prosecution's case, he could not elicit any error on fact or on law. As we already discussed in the preceding portions of this order, when the Trial Court has taken a reasonable possible view, based on available evidence, even after re-appreciation of evidence, when this Court could not even find any contra material to say that finding is manifestly and palpably wrong, then such finding of acquittal cannot be disturbed. Therefore, we are in full agreement with the view expressed by the Trial Court, that the prosecution has miserably failed to prove the charge against all the accused, beyond reasonable doubt.

22. In the result, this Criminal Appeal is dismissed.



WEB COPY



CrI.A.No.701 of 2018

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

23.08.2024

vm

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

To:

1.The Inspector of Police,
CBCID Police Station,
Puducherry.

M.S.RAMESH,J.
and
C.KUMARAPPAN,J.

vm



WEB COPY



Crl.A.No.701 of 2018

Judgment made in Crl.A.No.701 of 2018

23.08.2024