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Crl.A.No.130 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	19.09.2024
Pronounced on	17.10.2024

CORAM :

THE HONOURABLE Mr. JUSTICE **M.S. RAMESH**
AND
THE HONOURABLE Mr. JUSTICE **C.KUMARAPPAN**

Crl.A.No.130 of 2019

State represented by
The Public Prosecutor,
High Court, Madras-104.
[Uthiramerur P.S
Crime No.175/2014]

... Appellant/Complainant

Vs.

Ponnuvel

... Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378 of the Criminal Procedure Code to set aside the judgment of acquittal of the respondent/accused dated 13.04.2018 in SC.No.14 of 2015 on the file of the Additional Sessions Court [Fast Track Court], Kancheepuram and convict the respondent/accused for the charges framed against him.

For Appellant : Mr.A.Gokulakrishnan
Additional Public Prosecutor
For Respondent : Mr.T.Vijayaraghavan

JUDGMENT



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C.KUMARAPPAN, J.

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The instant Criminal Appeal has been filed by the State against the order of acquittal passed in SC.No.14 of 2015 by the Additional Sessions Court [Fast Track Court], Kancheepuram vide order dated 13.04.2018.

2. The relevant facts which are necessary for the disposal of this Appeal, are as follows:-

(a) There was a property dispute between the accused family and the deceased Chandran's family. On 01.04.2014 at about 3.00.p.m, while the son and wife of the deceased Chandran qua PW1 and PW2 were in their residence, the accused developed wordy quarrel with PW2-Kanniyammal. Since PW2-Kanniyammal questioned the high handedness of the accused, he attacked her with Velikathan wooden log on her right wrist and back and thereby, she sustained injuries. When PW1 intervened to protect his mother, she instructed him not to get involved in the quarrel. During such time, the deceased Chandran also returned home, after grazing cattle. On coming, he joined PW2 and questioned the accused. Enraged by such conduct, the accused assaulted the deceased on his head. Immediately, the deceased fell down and died on the spot. It is the further case of the prosecution that after



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the demise of deceased Chandran, PW1 took his injured mother PW2 to Uthiramerur Government Hospital, where she was provided with first aid and thereafter, referred to Chengalpattu Government Hospital, where she was admitted as an inpatient for treatment.

(b) While so, when PW12-Mr.Munusamy, Sub Inspector of Police was in the Uthiramerur Police Station, PW1-Sudhakar and PW2-Kanniyammal came to the police station and gave police complaint-Ex.P1 and the same was received and registered in Crime No.175 of 2014 for the offence under Sections 324 and 302 IPC. After registering the FIR, he made arrangements to forward the same to the concerned jurisdictional Magistrate and to the Investigating Officer.

(c) On receipt of the FIR, PW14-Mr.Kumar, Investigating Officer proceeded to the scene of occurrence on 02.04.2014 at about 06.15.a.m. He, in the presence of PW3-Natarajan and one Dhanasekar, prepared an Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P16). On the very same day, at about 7.15 a.m, the Investigating Officer collected the sample soil, as well as the blood stained soil, in the presence of PW4-Chitti Babu and PW5-



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Ethiraj. He then directly proceeded to the Chengalpattu Government Hospital and recorded the statement of PW1-Sudhakar, and PW2-Kanniyammal.

(d) Immediately thereafter, he conducted inquest upon the body of the deceased in the presence of witnesses, and also made arrangements for the postmortem of the body of the deceased. In the meanwhile, at about 2.00.p.m, the Investigating Officer arrested the accused Ponnuvel, in the presence of PW5-Ethiraj and PW6-Shanmugam. After the arrest, the accused has given a voluntary confession statement and the same was recorded in the presence of the same witnesses. On the basis of the confession statement, a discovery of fact was effected by recovery of a blood stained black striped white shirt [M.O.2], and blue jeans [M.O.3] under Mahazar Ex.P19. At about 7.00.p.m, the accused was remanded the judicial custody. The Investigating Officer-PW14 examined the Doctors viz., PW9-Dr.Mahesh Ram and PW11-Dr.Sathish Rajan and recorded their statements. He also recorded the statement of the postmortem Doctor-Dr.Balaji Rajasekar [PW10]. After that, he forwarded the alteration report to the concerned jurisdictional Magistrate.

(e) On his transfer, PW15-Mr.Manimaran took up further investigation and recorded the statements of the scientific officers-Mr.Srinivasan [PW13]



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and Ms.Subalakshmi and also collected the forensic reports. After concluding the investigation, he laid the charge sheet against the accused.

3. Before the Trial Court, the prosecution relied as many as 23 documents as Exs.P1 to P23, examined 15 witnesses as PW1 to PW15, and marked 3 Material Objects as M.O.1 to M.O.3 to prove their case. On behalf of the defence, one document has been marked as Ex.D1.

4. The Trial Court, after having considered the oral and documentary evidences, had found that the prosecution did not prove the charge beyond reasonable doubts, and ultimately acquitted the accused.

5. Assailing the said order of acquittal, the State has preferred the instant Criminal Appeal.



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6. The learned Additional Public Prosecutor would vehemently contend that PW2 is the injured witness, and that her evidence was corroborated by PW1 viz., the son of the deceased, and PW2, and also through an independent witness PW6. The findings rendered by the Trial Court that the delay in registering the FIR, would cause doubt in the prosecution case, is against all canons of law in a way, according to him, the same is perverse finding. The learned Additional Public Prosecutor would further contend that the non submission of AR copy of Uthiramerur Hospital may be an instance of irregular or a defective investigation, but such defective investigation will in no way, overshadow the testimony of the wholly reliable witnesses of PW1 and PW2. It is the further contention of the learned Additional Public Prosecutor that, when there is an injured eyewitness, that too when her statement was corroborated by 2 other witnesses, among whom, there was an independent witness, any discrepancy in the opinion of the Doctor or in respect of discovery of fact, the alleged unnatural conduct of PW1 will in no way affect the prosecution's case, and that any contrary finding would only be a perverse and superficial finding, which would in no way overshadow the creditworthiness of the trustworthy injured eyewitnesses. Hence, he prayed to allow the instant Criminal Appeal.



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7. Per contra, the learned counsel for the respondent/accused would contend that the very order of acquittal would reinforce and fortify the innocence of the accused. It was further contended that merely because there exists another view, cannot be a ground to interfere with the plausible finding rendered by the Trial Court. The learned counsel would further contend that the delay in registering the FIR would go to the root of the matter, and that the non submission of the accident register of the Uthiramerur Police, would definitely be fatal to the prosecution's case, as the same is nothing but, suppression of the first spontaneous version of the injured. The learned counsel would further contend that, if really PW2 reached Chengalpattu Government Hospital at about 5.00.p.m, the delay upto 9.45.p.m to give her treatment would also create a grave suspicion to the prosecution's case. The learned counsel would further contend that the delay in registering the FIR, and the delay in giving treatment would pave way for embellishment, craftsmanship and improvement in the narration of the occurrence, which would definitely cause a reasonable doubt in the prosecution's case. Therefore, it is the contention of the learned counsel for the respondent that, the view expressed by the Trial Court is a plausible view, which cannot be



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interfered with while re-appreciating the evidence, that too in an appeal arising against the order of acquittal.

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

9. It is well settled principle of law that there is no difference between the appeal against conviction, and appeal against acquittal. Even in the appeal filed against the order of acquittal, this Court has got full power to review the entire evidence. But, there is a very thin, but a fine distinction between the appeal against the conviction on the one hand, and the appeal against acquittal on the other hand. While dealing with the appeal against acquittal, we must keep in mind that the presumption of innocence was once again reinforced. Furthermore, whenever the Appellate Court deals about the appeal against acquittal, unless there is a compelling reason, and existence of error apparent on the face of record, the order of the acquittal cannot be lightly interfered with.



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10. Before we delve dealing into the factual position, we would also like to refer the latest judgment of the Hon'ble Supreme Court in ***Mallappa v. State of Karnataka*** reported in **(2024) 3 SCC 544**, wherein the Hon'ble Supreme Court, after discussing various judgments, has summarised the principles in deciding an appeal from an order of acquittal. For ready reference, the relevant paragraph is extracted hereunder:-

42. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarised as:

- (i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive — inclusive of all evidence, oral or documentary;*
- (ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;*
- (iii) If the court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;*
- (iv) If the view of the trial court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;*
- (v) If the appellate court is inclined to reverse the acquittal in appeal on a reappreciation of evidence, it must specifically address all the reasons given by the trial court for acquittal and must cover all the facts;*
- (vi) In a case of reversal from acquittal to conviction, the appellate court must demonstrate an illegality, perversity or error of law or fact in the decision of the trial court.”*



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11. Now keeping in mind the above principles, let us proceed to consider the facts of the instant case.

12. According to the prosecution, PW1 is the son of the deceased and PW2, were present at the scene of occurrence, when the accused assaulted the deceased and PW2. The occurrence took place at about 3.00.p.m on 01.04.2014, wherein, PW2 also sustained injuries. According to PW2, after the occurrence, she went to Chengalpattu Government Hospital at about 5.00 p.m. Prior to that, she had also taken first aid at Uthiramerur Hospital. Admittedly, there are no evidence of the treatment taken by PW2 at Uthiramerur Hospital. In this regard, it is the contention of the accused that the very first spontaneous information provided to the Doctor at Uthiramerur Hospital, was suppressed by not producing the Uthiramerur Hospital accident register.

13. However, it is the contention of the learned Additional Public Prosecutor that, when there is an injured witness, her testimony must be kept in higher pedestal and her evidence have to be given credence over the other witnesses. He would further urge that the defective investigation will in no



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way cause any dent in the prosecution case. The learned Additional Public Prosecutor has relied upon the judgment of the Hon'ble Supreme Court in ***Dharaj Singh Alias Shera and others Vs. State of Punjab*** reported in (2004) **3 SCC 654**.

14. As rightly contended by the learned Additional Public Prosecutor, the mere defective investigation should not be allowed to overshadow or defeat the testimony of the wholly reliable witnesses, only because the AR copy of the hospital was not produced. However, the thrust of the argument of the accused is, the earliest information was suppressed.

15. Further, while looking at the evidences of PW1 and PW2, there is a long drawn motive lingering between the accused and deceased. The learned Trial Judge, who had the advantage of looking at the demeanour of the witnesses, has raised a reasonable doubt about the presence of PW1, who is the son of the deceased and PW2, at the scene of occurrence. Here, PW1, who is able bodied person, admittedly did not at all reacted to the gruesome occurrence, where his father was done to death. This conduct was relied by the Trial Court to disbelieve PW1's presence at the scene of occurrence. It is



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true that each person has their own peculiar reaction for an action. Therefore, we cannot expect a particular reaction for a set of action. Each case has to be weighed according to its peculiar facts. But considering the reasons of the Trial Court, the view taken by the Trial Court is plausible and reasonable, whereby we could not find any perversity over the same.

16. In addition to that, from the evidence of postmortem Doctor-PW10, the defence tried to establish that there was a possibility for the deceased to be alive for about two hours after the alleged attack. Placing reliance upon the above evidence of the Doctor, the Trial Court found the conduct of PW1 and PW2 to be unnatural, as they simply left the deceased at the scene of occurrence and proceeded to hospital to have PW2 treated. It is the finding of the Trial Court that if really there was an occurrence as stated by the prosecution, leaving the deceased, who was struggling for his life, at the scene of occurrence, would not have happened. In this regard, the Trial Court found that no prudent man would leave a person, who was fighting for his life abruptly and proceed to the hospital to get treatment for themselves. This according to us, cannot be construed as a perverse finding, but rather would very well fall within the definition of plausible reasoning.



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17. The Trial Court has also found the discrepancy between the mode of conveyance from Uthiramerur Hospital to the Chengalpattu Hospital. According to PW1, his mother PW2 was taken to the Chengalpattu Hospital by ambulance, whereas PW2 had stated that she went in an auto. Therefore, the Trial Court found that if PW2 was taken to the Chengalpattu Hospital as projected by the prosecution, there could not be any discrepancy between PW1 and PW2 about the mode of conveyance. Now taking into consideration of reasons stated supra, this finding also cannot be held to be a perverse finding.

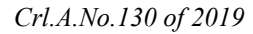
18. Besides, an yet another important circumstance was relied by the Trial Court, on the basis of non production of the accident report of the Uthiramerur Hospital. It is the case of the prosecution that immediately after the incident, PW2 and PW1 rushed to the Uthiramerur Hospital so as to take a treatment, where they were referred to the Chengalpattu Hospital for further treatment. When PW2 admits that she took treatment at Uthiramerur Hospital, definitely there would have been an accident register. But, no accident register was submitted before the Court. According to the defence, if the accident register is produced, the same would go against the



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prosecution's case and it is for this reason that the prosecution had not produced the AR copy. The said contention is again plausible reasoning in the background of the other reasonings. Besides, the long delay in giving treatment to PW2 at Chengalpattu Government Hospital, though she reached there at about 5.00.p.m, also definitely create a reasonable doubt. No doubt PW2 has suffered injury, but the concern is as to whether she sustained the injury along with the deceased, and whether PW1 had an opportunity to witness the occurrence. The Trial Court has doubted the presence of PW1 and PW2 on account of their unnatural conduct, the absence of accident register of Uthiramerur police station and also the unexplained delay in giving treatment to PW2.

19. It is pertinent to mention here that PW6 was also examined as an eyewitness, who is the resident of same village. Though he was projected as an eyewitness, his narration in chief examination appears to be hearsay in nature. On a harmonious reading of his evidence, he reaches the scene of occurrence only after the alleged occurrence had taken place. Therefore, PW6 will in no way helpful the case of the prosecution.



21. Thus, in line with the settled principle of law, even when there is a possibility to take a different view, the same cannot be a ground to interfere with the plausible findings rendered by the Trial Court, as the views in support of the accused has to be preferred. Hence, this Court is of the firm view that the finding of acquittal recorded by the Trial Court does not warrant any interference.



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

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[M.S.R., J.] [C.K., J.]
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Index: Yes

Speaking order

Neutral Citation: Yes

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

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Pre-delivery judgment made in
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17.10.2024