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Crl.A.Nos.126 & 420 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20.09.2024
Pronounced on	05.12.2024

CORAM :

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

Crl.A.Nos.126 & 420 of 2019Crl.A.No.126/2019

State represented by
The Inspector of Police
R3 Ashok Nagar Police Station
[Crime No.1149/2012]

... Appellant/Complainant

Vs.

1. Ramesh
2. Pandu @ Pandurangan
3. Sathish @ Sathishkumar
4. Prakash
5. Suresh
6. Ravi @ Pillakka Ravi
7. Mariamma
8. Chitra
9. Kutti @ Dillibabu

... Respondents/Accused 1 to 6, A9 to A11

PRAYER: Criminal Appeal filed under Section 378(1)(b) of the Criminal Procedure Code to set aside the judgment of acquittal of the respondents/accused A1 to A6 and A9 to A11 in SC.No.233 of 2014 on the



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file of the XIX Additional Sessions Court, Chennai dated 26.04.2018 and convict the respondents/accused A1 to A6 and A9 to A11 for the charges framed against them.

For Appellant : Mr.A.Gokulakrishnan
Additional Public Prosecutor

For Respondents : Mr.V.Krishna Kumar
for R1 to R9

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Rani

... Appellant/*de facto* complainant

Vs.

1. State Rep. by
The Inspector of Police,
R3, Ashok Nagar Police Station,
Chennai.
2. Ramesh
3. Pandu @ Pandurangan
4. Sathish @ Sathishkumar
5. Prakash
6. Suresh
7. Ravi @ Pillakka Ravi
- 8.Siva (died)
9. Sekar @ Dhanasekar [case splitted up]
- 10.Mariamamma
- 11.Chitra
- 12.Kutti @ Dillibabu

... Respondents

PRAYER: Criminal Appeal filed under Section 372(2) of the Criminal Procedure Code to set aside the judgment of the learned XIX Additional Sessions Court, Chennai acquitting the accused 2 to 12 in SC.No.233 of 2014



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dated 26.04.2018 and convict the accused 2 to 7 and 12 of the offences under Sections 120(b) r/w 302, 147, 148, 448 r/w 149, 302 r/w 34, 336 r/w 149, 427 r/w 149 and 506(ii) r/w 149 IPC and convict the accused 10 and 11 of the offences under Sections 120(b) r/w 302, 143 and 302 r/w 149 sentence them to imprisonment setting aside the order passed by the learned XIX Additional Sessions Court, Chennai and punish the accused under Sections 120(b) r/w 302, 143, 147, 148, 448 r/w 149, 302 r/w 34, 302 r/w 149, 336 r/w 149, 427 r/w 149 and 506(ii) r/w 149 IPC.

For Appellant : Mr.R.Murugabharathi
for Ms.L.Parvin Banu

For Respondents : Mr.A.Gokulakrishnan
Additional Public Prosecutor for R1
Mr.V.Krishnakumar for R2 to R12

COMMON JUDGMENT

C.KUMARAPPAN, J.

The instant Criminal Appeals have been filed against the order of acquittal passed in SC.No.233 of 2014 vide judgment dated 26.04.2018. The Criminal Appeal No.126 of 2019 was filed by the State. The other Criminal Appeal No.420 of 2019 was preferred by the mother of the deceased. Since both the appeals arises out of the same judgment passed in SC.No.233 of 2014, we deem it appropriate to take up both the appeals jointly for disposal.

2. There were 11 accused in this case. It appears that during the



pendency of the Trial, the 7th accused died. Therefore, the charge against the 7th accused got abated. As far as the 8th accused, the case was split up and renumbered as SC.No.72 of 2017 as he had absconded. We are now concerned with accused 1 to 6, 9 to 11 in these appeals.

3. According to the prosecution, 1st accused-Ramesh, 2nd accused-Pandu @ Pandurangan, 4th accused-Prakash and 5th accused-Suresh are brothers. The 9th accused-Mariamamma is the mother of the accused 1, 2, 4 and 5, and mother-in-law of the 10th accused-Chitra. The 3rd accused-Sathish @ Sathishkumar, 6th accused-Ravi, and 11th accused-Kutti @ Dillibabu are the friends of the accused 1, 2, 4 and 5.

4. Shun of unnecessary details, the following facts which are essential for disposal of the instant Criminal Appeal are as follows:-

(a) The deceased Siva, who was basically an auto driver, also used to lease out his autos. The accused 1 to 6, and 11 are also auto drivers. Both the deceased and the accused were plying autos from “Narayana Mission School auto stand”. It appears that the accused 1, 2, 4 and 5 had quarrels with the deceased regarding parking stand issues, and there was an altercation



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between them about 3 months back. However, the same was subsequently compromised at Ashok Nagar police station. It appears that the accused gave an undertaking to the police that, they will not disturb the deceased. However, after some time, the accused again started giving trouble to the deceased and also developed squabbles and quarrels with him very often. While so, the 1st accused, his mother-9th accused and the 1st accused brother's wife-10th accused, have also intimidated the deceased to vacate their house. Thus, all the accused had an unquenched grudge against the deceased and proclaimed very often to do away the deceased.

(b) On 03.06.2012 afternoon, the deceased was resting in his bed. At about 3.45 p.m, the 1st accused Ramesh, 2nd accused Pandu @ Pandurangan, 4th accused Prakash, and 5th accused Suresh, suddenly entered the deceased's house, and after indiscriminately attacking the deceased with a patta knife, dragged him to the road, and again attacked him with the weapon. The accused 9 and 10 had instigated the other accused to do away the deceased, PW1 and PW2. It appears that PW1 and PW2 escaped from their attack. After the gruesome occurrence, there was upheaval among the public near the scene of occurrence, and the shop owners closed their shops.



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(c) After the accused left the scene of occurrence, PW1 went to the police station and gave a complaint [Ex.P1] to the Sub Inspector of Police Tmt.Jayanthi [PW23].

(d) On receipt of the complaint, she [PW23] registered an FIR in Crime No.1149 of 2012 at about 16.15 hours. Thereafter, she forwarded the same to the concerned jurisdictional Magistrate, as well as to the Investigating Officer Mr.Saravanan [PW24]. On receipt of the copy of FIR, the Investigating Officer [PW24] proceeded to the scene of occurrence at about 17.00 hours, prepared the Observation Mahazar [Ex.P2], and Rough Sketch [Ex.P13] in the presence of the witnesses and recorded their statements. He also collected the blood stained Cement floor from the deceased's house, sample cement floor, blood stained bedsheets and broken glass pieces from the scene of occurrence. Thereafter, he made arrangements to send the body of the deceased to Kilpauk Government Hospital, where he conducted the inquest on 04.06.2012. He also made arrangements for the postmortem. In the meanwhile, on 04.06.2012 Ramesh [A1], Pandu @ Pandurangan [A2], Siva [A7], Sekar [A8] and Kutty @ Dillibabu [A11] surrendered before the



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learned Judicial Magistrate, Ponneri. On 05.06.2012 at about 16.00 hours, Mariamma [A9] and Chitra [A10] were arrested by the Investigating Officer. On arrest, Mariamma [A9] voluntarily gave a confession statement in the presence of Dinakaran [PW15], and Kumar. The 3rd accused Sathish was also arrested on the same day, who also gave a confession statement in the presence of Saravanan [PW18] and Karnan [PW21]. After recording their confession statements, a blood stained weapon and the vehicle involved in the occurrence, were recovered.

(e) In the meanwhile, on 16.06.2012, the 4th accused Prakash, and the 5th accused Suresh surrendered before the learned XVII Metropolitan Magistrate, Saidapet. The Investigating Officer [PW24] had forwarded all the recovered materials to the concerned jurisdictional Magistrate under Form 95, and also made arrangements for forensic analysis. He also recorded the statement of Doctor Mr.Chandrasekaran [PW20], who conducted the postmortem. Thus, after completing the investigation, he laid the charge sheet against the accused.

5. Before the Trial Court, the prosecution relied on as many as 24



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witnesses as PW1 to PW24, marked 19 documents as Exs.P1 to P19, and 10 Material Objects as M.O.1 to M.O.10.

6. The Trial Court, after having considered the oral and documentary evidences, found that the prosecution had miserably failed to prove the case beyond reasonable doubts and as a concomitant, acquitted all the accused. Assailing the said order of acquittal, the *de facto* complainant and the State have preferred the instant appeals.

7 (a). The learned Additional Public Prosecutor would vehemently contend that, the findings rendered by the Trial Court is against the evidences before it. The learned Additional Public Prosecutor would further contend that, the Trial Court has omitted to consider the relevant materials and has relied on irrelevant materials. In short, it is the contention of the learned Additional Public Prosecutor that the finding of the Trial Court is perverse, and have errors apparent on the face of the record. The learned Additional Public Prosecutor also contended that, when there is an eyewitness statement, which statement was corroborated by the other witnesses, the discrepancy in the recovery and arrest have no significance. The learned Additional Public



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Prosecutor would vociferously contend that, by examining the father-in-law, and friend of the deceased qua Mani [PW4] and G.Mohan [PW5], the motive was proved. Besides, through PW1-mother of the deceased, and PW2-Wife of the deceased, being the occurrence witnesses, the prosecution had proved the occurrence. Further, the evidences of PW1 and PW2 have been corroborated through the evidences of PW9 and PW16, as they had spoken about the sudden upheaval near the scene of occurrence. It is his contention that, though the recovery witnesses turned hostile, that does not mean that the wholly reliable evidences of PW1 and PW2 is to be ignored.

7(b). The learned Additional Public Prosecutor would further contend that the absence of recovery of all the weapons, would in no way affect the prosecution's case, since the occurrence witnesses are trustworthy eyewitness. It is the further contention of the learned Additional Public Prosecutor that the finding rendered by the Trial Court based upon the inquest report is perverse finding and contrary to the provision of Section 174 Cr.P.C. Thus, the learned Additional Public Prosecutor would contend that the findings rendered by the Trial Court is contrary to law and have errors apparent on the face of the records and therefore, prayed to allow this appeal by reversing the order of



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acquittal and pass an order of conviction against the accused.

8. The learned counsel for the victim Mr.R.Murugabharathi also supported and reiterated the contention of the learned Additional Public Prosecutor. In addition to the above submission, he contended that, the Trial Court did not consider the factum of throwing of weapon into the Sea. Besides, the learned counsel would contend that the non-recovery of weapon will in no way affect the prosecution case as the prosecution proved the case through the eyewitness account and hence, prayed to interfere with the order of the acquittal.

9. Per contra, the learned counsel appearing on behalf of the accused would vehemently contend that the finding rendered by the learned Sessions Judge comes within the contours of plausible finding and that there is no possibility for PW1 and PW2 to be present at the scene of occurrence. Further, the absence of PW1 and PW2 at the scene of occurrence would vindicate through the inquest report. The learned counsel would also draw the attention of this Court about the conduct of inquest at the hospital instead of scene of occurrence, and the non recovery of weapon and would contend that



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these are the reasonable doubts. It is in this background, he contended that the order of the learned Trial Judge cannot be termed as a perverse one. Besides, it is also the contention of the learned counsel for the respondent that there was a prior enmity between the deceased family and the accused, and hence, the possibility of false implication of all the accused, cannot be ruled out. It is the further contention of the learned counsel that the findings rendered by the Trial Court is reasonable, plausible and based upon the materials available before the Court. He would further contend that, the mere possibility for another view, cannot be a ground to interfere with the order of acquittal and hence, prayed to dismiss the instant appeal.

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

11. This Criminal Appeal is against the order of acquittal. The prosecution attempted to prove the case through the eyewitness account, qua PW1 and PW2, who are the mother and wife of the deceased, whose evidences were further strengthened and corroborated by examining PW4-father-in-law of the deceased, and PW5[Mohan]-friend of the deceased. Both PW4 and PW5 had spoken about the motive. But, while perusing the order



of the learned Sessions Judge, the learned Sessions Judge has raised numerous doubts in the prosecution's case. While harmoniously reading the entire judgment of the learned Sessions Judge, the very narration in paragraph 12 would manifest that the Trial Court proceeded with the case, as if this case is based upon the circumstantial evidence, in spite of the fact that the prosecution mainly relied upon the eyewitnesses.

12. The Trial Court, while recording the acquittal, had took into consideration of some alleged unnatural conduct of PW1 and PW2, such as not attending the deceased immediately to provide treatment, and not recovering any blood stained dress materials from PW1 and PW2. The Trial Court has also recorded that the delay in forwarding the Statement recorded under Section 161 Cr.P.C, non recovery of weapon from all the accused, and the alleged impossibility of the attack at the scene of occurrence. The above reasons were mentioned to support the order of acquittal. The Trial Court had also raised a doubt in the prosecution's case for not conducting inquest at the very scene of occurrence. Besides, the Trial Court has also held that there is no proof regarding previous enmity of the deceased with 9th and 10th accused. Thus, on the above grounds, the Trial Court held that there are reasonable



doubts in the prosecution's case and acquitted all the accused.

13. Before we delve into the merits of the matter, let us consider the power of the High Court, while considering the appeal against acquittal. It is well settled principle of law that, there is no difference between the appeal against acquittal and appeal against conviction. Even in the appeal against acquittal, the Appellate Court can review and reconsider the entire evidence and come to its own conclusion, 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 conclusions reached by the Trial Court, it should pay due attention to the grounds of which acquittal was rested, and must state the reason as to why the order leading to the acquittal is unacceptable. It was also held that while re-appreciating or reviewing the evidence, the Appellate Court must keep in mind that, the presumption of innocence in favour of the accused is further fortified by the finding of acquittal by the Trial Court, which had the advantage of looking at the demeanor of the witness. Therefore, if the High Court has reason to deviate from the order of acquittal, there is a duty cast upon the High Court to give clear reasons to dispell the doubts raised, and reject the reason given by



the Trial Court. In this regard, it is useful to refer to the judgment of the Hon'ble Supreme Court in ***Pulicherla Nagaraju Vs. State of A.P.***, reported in ***(2006) 11 SCC 444*** .

14. In yet another judgment of the Hon'ble Supreme Court in ***Muralidhar Vs. State of Karnataka***, reported in ***(2014) 5 SCC 730***, the Hon'ble Supreme Court has enunciated the principles as to how the High Court should deal the appeal against acquittal. The relevant paragraph is paragraph 12, and the same is extracted hereunder:-

“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:..... 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



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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

(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.”

15. In the latest judgment of the Hon'ble Supreme Court in ***Kalinga Vs. State of Karnataka***, reported in **(2024) 4 SCC 735**, wherein the Hon'ble Supreme Court has reiterated and restated above the principles. The relevant paragraph is paragraphs 26 & 27 and the same read as under:-

“26. This Court cannot lose sight of the fact that the trial court had appreciated the entire evidence in a comprehensive sense and the High Court reversed the view without arriving at any finding of perversity or illegality in the order of the trial court. The High Court took a cursory view of the matter and merely arrived at a different conclusion on a reappreciation of evidence. It is settled law that the High Court, in exercise of appellate powers, may reappreciate the entire evidence. However, reversal of an order of acquittal is not to be based on mere existence of a different view or a mere difference of opinion. To permit so would be in violation of the two views theory, as reiterated by this Court from time to time in cases of this nature. In order to reverse an order of acquittal in appeal, it is essential to arrive



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at a finding that the order of the trial court was perverse or illegal; or that the trial court did not fully appreciate the evidence on record; or that the view of the trial court was not a possible view.”

27. At the cost of repetition, it is reiterated that the anomaly of having two reasonably possible views in a matter is to be resolved in favour of the accused. For, after acquittal, the presumption of innocence in favour of the accused gets reinforced. In Sanjeev v. State of H.P. [Sanjeev v. State of H.P., (2022) 6 SCC 294 : (2022) 2 SCC (Cri) 522] , this Court summarised the position in this regard and observed as follows : (SCC p. 297, para 7)

“7. It is well settled that:

7.1. While dealing with an appeal against acquittal, the reasons which had weighed with the trial court in acquitting the accused must be dealt with, in case the appellate court is of the view that the acquittal rendered by the trial court deserves to be upturned (see Vijay Mohan Singh v. State of Karnataka [Vijay Mohan Singh v. State of Karnataka, (2019) 5 SCC 436 : (2019) 2 SCC (Cri) 586] , Anwar Ali v. State of H.P. [Anwar Ali v. State of H.P., (2020) 10 SCC 166 : (2021) 1 SCC (Cri) 395]).

7.2. With an order of acquittal by the trial court, the normal presumption of innocence in a criminal matter gets reinforced (see Atley v. State of U.P. [Atley v. State of U.P., 1955 SCC OnLine SC 51 : AIR 1955 SC 807]).

7.3. If two views are possible from the evidence on record, the appellate court must be extremely slow in interfering with the appeal against acquittal (see Sambasivan v. State of Kerala [Sambasivan v. State of Kerala, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320]).”

16. Now let us proceed with the facts of the present case with the touchstone of the above settled legal principles.

17. To understand the seriousness of this matter, we deem it



appropriate to speak about the macabre injuries sustained by the deceased.

The Postmortem Doctor [PW19] had stated that the deceased sustained 33 cut injuries and has opined that the deceased would have died of shock and haemorrhage. According to the postmortem certificate [Ex.P8], all the 33 cut injuries are on the vital part of the deceased viz., throat, shoulder, right and left arms, chest, clavicle region, stomach, face and on the head and occipital region. The nature of the injuries mentioned in Ex.P8 would demonstrate the height of gruesome meted out to the deceased.

18. The Trial Court has erroneously disbelieved the evidence of PW1 and PW2, who are eyewitnesses. The first and foremost reason given by the Trial Court to disbelieve their evidence is their alleged unnatural conduct of not taking effective steps to treat the deceased immediately. As already discussed, the deceased had 33 injuries on his vital part, and died on the spot. This aspect was spoken by PW1 and PW2 and the postmortem certificate also supports the version of PW1 and PW2. This is not a case, where deceased was still alive and the PW1 and PW2 failed to attend him, but a case where the death of the deceased was instantaneous. Hence, there was no necessity for PW1 and PW2 to take the deceased for treatment and hence, the question of unnatural conduct does not surface in this case.



19. PW2 had categorically stated that after the gruesome attack, the deceased had died on the spot. The relevant portion of the evidence of PW2 during cross examination is as follows:-

“போலீஸ்காரர்கள் எங்கள் வீட்டிற்கு வந்தபோது எனது கணவரின் சடலம் வீட்டில் தான் இருந்தது. போலீசார் வரும் முன்னர் வெட்டுபட்ட என் கணவரை மருத்துவமனை எடுத்துச் செல்ல முயன்றோமா என்றால் எனது கணவருக்கு கழுத்தெல்லாம் வெட்டுபட்டு அங்கேயே இறந்துவிட்டார். நானோ அல்லது எனது மாமியாரோ எனது கணவரின் சடலத்தை தொட்டு பார்த்தோமா என்றால் இல்லை பார்ப்பதற்கே பயங்கரமாக இருந்தது”

The above narration would depict the PW2's consternation and macabre chain of events and kaput condition of the deceased body. But the Trial Court did not go into these material aspects. Considering the kaput and egregious condition of the deceased body, no ordinary prudent man would attempt to take the dead body to the hospital for treatment. In such scenario, the PW1 and PW2 have rightly proceeded to the police station.

20. To further understand the seriousness of the terrifying occurrence, we must also look at the explanation given by the police. According to them, the situation at the scene of occurrence was not conducive even to conduct



inquest. But, the Trial Court did not take into consideration of all the above material circumstances, but mechanically reached to the conclusion of unnatural conduct. Further, the mere unnatural conduct by itself cannot be a ground to disbelieve the presence of PW1 and PW2, as each one may have different way of reaction to an occurrence. Therefore, the very finding that the conduct of PW1 and PW2 is unnatural, is a perverse finding and such erroneous finding was arrived without considering the evidence of PW2 and PW24-Investigating Officer.

21. The further finding by the Trial Court to disbelieve the evidence of PW1 and PW2 is based on the absence of blood stain in their dress materials. Even assuming that the blood stained cloth was not recovered from PW1, at the best, the same could be a defective investigation, which would not go into the root of the matter. The Trial Court has also considered the delay in sending the statement recorded under Section 161 Cr.P.C, seizure mahazar and observation mahazar, as a ground to disbelieve the prosecution case.

22. In respect of 161 Cr.P.C statement, the statements of PW3, PW4, PW5, PW6 and PW7 were sent belatedly after 7 months. But, among them, PW3, PW6 and PW7 turned hostile and the other witnesses PW4 and PW5



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were examined only to speak about the motive. Even if the evidences of PW4 and PW5 are considered to be doubtful, still the evidences of PW1 and PW2 are there, and there is no delay in sending their statements to the Court. Therefore, while ignoring the veracity of the other statements which were sent with delay, there is a duty cast upon the Trial Court to consider the trustworthiness of the remaining witnesses. But, there is no discussion in the entire judgment as to the veracity of the evidences of PW1 and PW2. In fact PW11 and PW14 in categorical term given a *res gestae* evidence against A1, A2, A4 and A5. They deposed that immediately after the occurrence, when they reached their shops, there was a talk that the deceased was murdered by one Gangamma's sons. The relevant admission of PW11 and PW14 are as follows:-



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“PW11

சிவாவை யாரோ வெட்டிவிட்டார்கள் என்று சொன்னார்கள். நான் பயந்துகொண்டு வீட்டிற்கு போய்விட்டேன் மீண்டும் 7 மணிக்கு கடைக்கு வந்தேன். கெங்கம்மாவின்னுடைய பிள்ளைகள் சிவாவை வெட்டிவிட்டதாக பேசிக்கொண்டார்கள் நான் கேள்விப்பட்டேன். வேறு ஒன்றும் தெரியாது.”

PW14

சிவாவை யாரோ கொலை செய்துவிட்டார்கள் என நான் கேள்விப்பட்டேன் கெங்கம்மாவின் மகன்கள் சிவாவை கொலை செய்துவிட்டார்கள் என பேசிக்கொண்டார்கள் அதை நான் கேட்டேன். கெங்கம்மாவின் பிள்ளைகள் நீதிமன்றத்தில் இருக்கிறார்கள் ஆஜர் எதிரிகளில் கெங்கம்மாவின் மகன்கள் பிரகாஷ்ஜி, ரமேஷ், சுரேஷ், மற்றும் ஒருவர் ஆவர்”

These two witnesses were not cross examined by the accused. As a concomitant the above evidence becomes unchallenged. These evidence are relevant under Section 8 of The Evidence Act and corroborated PW1 and PW2's evidence.

23. The Trial Court has considered an yet another flimsy ground of delay of 13.50 hours, in sending the FIR to the Court, as a doubt in the prosecution case. According to the prosecution, the occurrence took place on 03.06.2012 at 15.45 hours and the FIR was registered on the same day at 16.15 hours, but, the same reached to the residence of the jurisdictional Magistrate on next day morning at 5.15 am [i.e., 04.06.2012]. The reason for delay, as explained by the Investigating Officer, was due to the 2 months long Advocates Boycott against the appellant police station [Ashok Nagar Police Station] and their consequential difficulty to enter into the Court. Here



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the factum of long drawn boycott and the consequential difficulty of the Ashok Nagar Police to enter the Court has not been disputed. It is in this background, we are of the firm view that the alleged delay was duly explained, which aspect was not appreciated by the Trial Court.

24. It is well settled principle of law that mere delay by itself cannot be a ground to disbelieve the prosecution's case. Similarly, the mere prompt registering of the FIR and forwarding the same to the concerned jurisdictional Magistrate, also cannot be a point in favour of the prosecution. Therefore, the finding rendered by the Trial Court contrary to the available evidence and disbelieving the entire prosecution's case on the basis of the delay, is perverse finding. The Trial Court unfortunately had no occasion to discuss PW1 and PW2 evidence.

25. It is settled principle of law that, the reasonable doubt is essentially a serious doubt in the case of the prosecution, and minor inconsistencies should not be elevated to the status of the reasonable doubt. The reasonable doubt means a doubt which renders the possibility of guilt as highly doubtful. We must also keep in mind that the purpose of criminal trial is not only to ensure that the innocent person is not punished, but also should ensure that the guilty does not escape unpunished. Therefore, a great duty to the Society



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rest upon the Courts for effective performance of their duty and such crucial role would enable to secure the faith of the common people in rule of law. Here in the case in hand, the liberal adherence of reasonable doubt by the Trial Court resulted in unmeritorious acquittal, as manifest from the foregoing discussions.

26. Further, the other doubt, which has been dealt is non recovery of weapon. But, if we go by the prosecution's case, it was an attack by a gang. On close scrutiny of the evidence of PW1 and PW2, this Court does not have any doubt over the presence of all the accused at the scene of occurrence. The accused did not brought out any valid grounds to disbelieve the evidence of PW1 and PW2. Therefore, in such a situation, the mere non recovery of weapon cannot be a ground to disbelieve the prosecution's case. Apart from that, if there is a direct evidence in the form of eye witness, the absence of recovery of weapon, would loose it's significance. In this regard, it is relevant to refer the judgment of the Hon'ble Supreme Court in ***State through the Inspector of Police Vs. Laly alias Manikandan and another*** reported in ***2022 SCC OnLine SC 1424***.

27. Further, the Trial Court erroneously held that non conducting of



inquest at the scene of occurrence is a reasonable doubt. In this regard, it is useful to refer the judgment of the Hon'ble Supreme Court in ***Tehseen Poonawalla Vs. Union of India and another*** reported in **(2018) 6 SCC 72**, wherein the Hon'ble Supreme Court after relying various judgments, ultimately held in paragraph 42 as follows:-

“42. In Manoj Kumar Sharma v. State of Chhattisgarh [Manoj Kumar Sharma v. State of Chhattisgarh, (2016) 9 SCC 1 : (2016) 3 SCC (Cri) 407] , a Bench of two learned Judges held that the purpose of an “inquest” in cases of accidental or suspicious deaths under Sections 174 and 175 is distinct from the “investigation” under Section 157 of the Code under which if an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered to investigate, he shall proceed in person to the spot to investigate the facts and circumstances of the case. Reiterating this principle, a two-Judge Bench in Bimla Devi v. Rajesh Singh [Bimla Devi v. Rajesh Singh, (2016) 15 SCC 448 : (2016) 4 SCC (Cri) 662] explained the scope of the provisions of Section 174 in the following observations : (Bimla Devi case [Bimla Devi v. Rajesh Singh, (2016) 15 SCC 448 : (2016) 4 SCC (Cri) 662] , SCC pp. 453-54, para 10)

“10. ... The scope of the section is investigation by the police in cases of unnatural or suspicious death. However, the scope is very limited and aimed at ascertaining the first apparent signs of the death. Apart from this, the police officer has to investigate the place wherefrom the dead body is recovered, describe wounds, fractures, bruises and other marks of injury as may be found on the body, stating in what manner or by what weapon or instrument, such injuries appear to have been inflicted. From the above, it thus becomes clear, that the section aims at preserving the first look at the recovered body and it need not contain every detail. Mere overwriting in the name of the informant would not affect the proceedings.”

43. The same position has been laid down in a more recent decision of a two-Judge Bench in Yogesh Singh v. Mahabeer Singh [Yogesh Singh



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v. Mahabeer Singh, (2017) 11 SCC 195 : (2017) 4 SCC (Cri) 257] :
(SCC p. 217, para 41)

“41. Further, the evidentiary value of the inquest report prepared under Section 174 CrPC has also been long settled through a series of judicial pronouncements of this Court. It is well established that inquest report is not a substantive piece of evidence and can only be looked into for testing the veracity of the witnesses of inquest. The object of preparing such report is merely to ascertain the apparent cause of death, namely, whether it is suicidal, homicidal, accidental or caused by animals or machinery, etc. and stating in what manner, or by what weapon or instrument, the injuries on the body appear to have been inflicted.”

[Emphasis supplied by this Court]

28. It is a settled principle of law that the inquest provided under Section 174 Cr.P.C, is only to ascertain as to whether a person has committed suicide or has been killed by accident or by an animal. There is absolutely no requirement in law to mention the details of the FIR, names of the accused or the names of the eyewitnesses or the gist of their statements in the inquest, nor it is required to be signed by any eyewitness. However, in the instant case, the Trial Court has relied upon the stray entry made in column 15 of the inquest that the accused took advantage of the deceased lone presence, and based on the above entry, gave erroneous finding that, the same proves the absence of PW1 and PW2 at the scene of occurrence. If we read the entire inquest, the PW1's presence could unequivocally be inferred from entries in



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column 3 and 4. Further, the reference in Column 15 would only indicate that the deceased was alone in his residence, without any other member of his coterie. Therefore, the Trial Court's reason to disbelieve the presence of PW1 and PW2 at the scene of occurrence is again a perverse finding. Further, the above finding is absolutely contrary to the settled legal principles and contrary to the available materials.

29. Furthermore, why the inquest could not be conducted at the scene of occurrence, was sufficiently explained by the Investigating Officer, as there was upheaval and tense prevailed near the scene of occurrence and that there was a fear psychosis among the people in the vicinity. Besides, the place where the deceased body was found is admittedly an alley. In view of the above available evidence, the doubt raised by the Trial Court, without even looking at the unchallenged explanation of the Investigating Officer, is absolutely a perverse finding.



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30. The other perverse finding recorded by the Trial Court to disbelieve P.W.1 and PW2, is their conduct of not accompanying the body of the deceased to the hospital. In a case of this nature, we must visualise the situation that prevailed at the scene of occurrence. This is a case where a notorious gang, armed with deadly weapons, had indiscriminately attacked and disfigured the body of the deceased, which permeated fear among the residents in the vicinity. In such a scenario, the conduct of PW1 and PW2, rushing to the police station, cannot be doubted at all and cannot be construed as an unnatural conduct.

31. In the case in hand, PW1 has categorically stated that she was present at the scene of occurrence and there was enmity with A9-Mariamamma. However, the scene of occurrence was also doubted by the Trial Court on account of the sloppy structure of the shed with low roofing. According to the Trial Court, there could have been no possibility of assault by a gang in such a cramped low roofing shed. But, PW1 had explained that at the time of occurrence, the deceased was resting in his bed and the accused assaulted him by bending themselves.



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32. PW1 and PW2 had cogently explained about the attack of all the accused, except A9/Mariamamma and A10/Chitra. From the evidence of PW1 and PW2, as against A9 and A10, what emerges is their instigation to attack the deceased indiscriminately and to cut him to pieces. From the evidence of PW1 and PW2, though the presence of A9/Mariamamma and A10/Chitra is overwhelmingly established as members of the unlawful assembly, their overt act of instigation had arisen only after the other accused had done away with the deceased. To put it differently, after the assault inside the house, when the other accused pulled the deceased to the road, the instigation of A9 and A10 took place. It is in this background, we think it is highly unsafe to convict A9 and A10 for the offence under Section 302 read with 149 of IPC. Therefore, though the charges against the accused 1 to 6 and 11 are proved beyond reasonable doubt, as against the accused 9 and 10, this Court could not find any material to vicariously make them liable under Section 149 of IPC.

33. In this case, PW1 and PW2 have withstood arduous cross examination and their statements are straight forward and clearly explains the nature of event. This apart, their statements were also corroborated by the *res gestae* evidences of PW11 and PW14. In order to discredit their



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evidences, no material was put forth before this Court.

34. In view of the foregoing findings, we hold that the prosecution has proved beyond doubt that:

(a) the conspiracy hatched by the accused, viz., Ramesh (A1), Pandu @ Pandurangan (A2), Sathish @ Sathishkumar (A3), Prakash (A4), Suresh (A5), Ravi @ Pillakka Ravi (A6), and Kutti @ Dillibabu (A11). The act of these persons are thus punishable under Section 120B r/w 302 of IPC.

(b) the accused named in para 34(a) above, have committed the offence of rioting punishable under Section 147 of IPC.

(c) the accused named in para 34(a) above, have committed the offence of rioting, armed with deadly weapons and are punishable under Section 148 of IPC.

(d) the accused named in para 34(a) above, have committed the offence of house trespass and are liable to be punished under Section 448 r/w 149 of IPC.

(e) the accused named in para 34(a) above, have committed the offence



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of murder of the deceased/Siva, and are punishable under Section 302 r/w 34 of IPC.

35. As regards the questioning the accused on sentence, since we are imposing the minimum sentence of imprisonment for life prescribed under Section 302 of IPC, we feel that it may not be necessary to question them. As regards questioning them qua the other offences, since we are imposing terms of imprisonment of one year or less than one year, which we are directing to run concurrently with the life sentence, we are dispensing with this legal formality.

36. In fine, the Criminal Appeal No.126 of 2019 is partly allowed and the judgement and order of acquittal dated 26.04.2018 passed by the learned XIX Additional Sessions Judge, Chennai in S.C.No.233 of 2014 against Ramesh (A1), Pandu @ Pandurangan (A2), Sathish @ Sathishkumar (A3), Prakash (A4), Suresh (A5), Ravi @ Pillakka Ravi (A6), and Kutti @ Dillibabu (A11) is set aside and each of them are convicted and sentenced as follows:-



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1	Under Section 120B r/w 302 of IPC	:	Imprisonment for life and fine of Rs.1,000/- in default to undergo one year simple imprisonment each.
2	Under Section 147 of IPC	:	6 months rigorous imprisonment and fine of Rs.500/-, in default to undergo one month simple imprisonment each.
3	Under Section 148 of IPC	:	one year rigorous imprisonment and fine of Rs.500/-, in default to undergo one month simple imprisonment each.
4	Under Section 448 r/w 149 of IPC	:	5 months rigorous imprisonment and fine of Rs.500/-, in default to undergo one month simple imprisonment each.
5	Under Section 302 r/w 34 of IPC	:	Imprisonment for life and fine of Rs.1,000/- in default to undergo one year simple imprisonment each.

All the aforesaid sentences imposed on the accused are ordered to run concurrently. The Trial Court is directed to secure the accused convicted hereinabove and commit them to prison to undergo the aforesaid sentences. Bail bonds, if any executed by the accused shall stand cancelled.

37. The Registry is directed to send seven (7) true copies of this judgment to the Trial Court so that free copies will be furnished to the convicted accused as and when they appear/are produced for committing them to prison.

38. The order of acquittal passed by the Trial Court against Mariamma [A9] and Chitra [A10] stands confirmed.



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39. As regards Crl.A.No.420 of 2019 filed by mother of the deceased, in view of the judgment passed in Crl.A.No.126 of 2019, no order needs to be passed separately. Hence, Crl.A.No.420 of 2019 stands closed.

40. To sum up Crl.A.No.126 of 2019 stands partly allowed and Crl.A.No.420 of 2019 stands closed.

[M.S.R., J.] [C.K., J.]
05.12.2024

Index:Yes

Speaking order

Neutral Citation: Yes

kmi

To

1. The XIX Additional Sessions Court,
Chennai.
2. The Inspector of Police,
R3, Ashok Nagar Police Station,
Chennai.
3. The Public Prosecutor,
High Court,
Chennai-104.



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

kmi

Pre-delivery judgment made in
Crl.A.Nos.126 & 420 of 2019

05.12.2024