



Crl.A(MD)Nos.221 and 223 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 15.03.2024

Delivered on : 28.03.2024

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

Crl.A(MD)Nos.221 and 223 of 2020

Crl.A(MD).No.221 of 2020

Velkan @ Kottar

... Appellants/P.W.12/
Brother of the Deceased

Vs.

1.Maravettiyan @ Murugaraj
2.Sakthivel
3.Suyambu
4.Murugan
5.Vallimayil
6.Rajavel
7.State rep by
The Inspector of Police,
Thiyasanvilai Police Station,
Tiruneveli District.
(Crime No.301 of 2004)

... Respondents/Complainants

Prayer: This Criminal Appeal is filed under Section 372 of Cr.P.C., to call for the records in S.C.No.386 of 2004 on the file of the I Additional District and Sessions Judge, Tirunelveli and set aside the judgment of acquittal passed by



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the learned Judge on 12.01.2016 thereby allow this appeal by convicting the accused for the charges framed against them.

Crl.A(MD).No.223 of 2020

Velkan @ Kottar

... Appellants/Accused No1

Vs.

1.Raman @ Jeyaraman

2.Jeyaraj @ Pandaram

3.State rep. by

The Inspector of Police,
Thiyasanvilai Police Station,
Tirunelveli District.

(Crime No.301/2004)

...Respondents/Accused Nos.1&2

... Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374 of Cr.P.C.,to call for the records in S.C.No.327 of 2015 on the file of the I Additional District and Sessions Judge, Tirunelveli and set aside the judgment of acquittal passed by the learned Judge on 04.10.2019 thereby allow this appeal by convicting the accused for the charges framed against them.

For Appellants : Mr.V.Kathirvelu, Senior Counsel
in both cases for Mr.K.Prabhu

For R1 in Crl.A : Mr.M.Ramanathan
(md)No.221/20

For R2 to R6 : Mr.S.Deenadhayalan
in Crl.A(MD)No.
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For R7

:Mr.R.Meenakshisundaram

Additional Public Prosecutor

For R1 & R2

:Mr.R.Gandhi, Senior Counsel,

in Crl.A(MD)

for Mr.B.Anandan

No.223/2020

For R3

:Mr.R.Meenakshisundaram

Additional Public Prosecutor

JUDGMENT

DR G. JAYACHANDRAN,J.

AND

C.KUMARAPPAN,J.

Crl.A(MD)No.221 of 2020 arising out of the Sessions Case No.386 of 2004. Initially, there were 8 accused in S.C.No.386 of 2004. Thereafter, on abscondence of the second accused viz., Raman @ Jeyaraman and the third accused viz., Jeyaraj @ Pandaram, the case was splitted up as separate S.C.No. 327 of 2015 against them. Thereafter the accused were rearranged in S.C.No. 386 of 2004 as A1 to A6 and trial was conducted, wherein all the accused were convicted on 12.01.2016. Against the said conviction, he preferred an appeal in Crl.A(MD)No.221 of 2020.



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2.Subsequently, on securing the absconding accused viz., Raman @ Jeyaraman and Jeayaraj @ Pandaram, a separate trial was conducted against them in a splitted case in S.C.No.327 of 2015. Even against these accused, the order of conviction was passed on 04.10.2019. Against this order, the above named two accused has preferred an appeal in Crl.A(MD)No.223 of 2020. Since both the cases are arising out of the same Crime No.301 of 2004, though there are two different Sessions Court judgments, and two different appeals, this Court deems it appropriate to pass a common order in both the appeals.

3.For the sake of convenience, the accused will be referred according to their status mentioned in the charge originally framed against all the 8 accused in S.C.No.386 of 2004.

4.According to the prosecution, the deceased Natarajan was prominent in conducting Subramaniyapuram Uthcimakali Amman temple festival. The fateful occurrence took place on 23.07.2004. About two months back from the date of occurrence, the accused 1 to 3[Maravettiyan @ Murugaraj, Raman @ Jeyaraman and Jeyaraj @ Pandaram] have met deceased Natarajan and warned him to step out from organizing the temple festival. Since



the deceased Natarajan refused to do so, the accused 1 to 3 has intimidated the deceased that they would done away with the deceased, prior to the ensuring temple festival. In furtherance to the above intimidation, on 23.07.2004 at about 20.00 hours all the accused came with a common intention to cause riot and formed an unlawful assembly. While so, when the deceased and his brother Velkan @ Kottar arrived at the scene of occurrence and when they proceeded towards the western direction, the first accused wrongfully restrained the deceased, whileso the accused 2 to 7 had attacked the deceased with sickle. The accused 1 & 8 being the members of unlawful assembly, having shared the common intention to do away the deceased. Hence, against the first accused a charge under Sections 147, 341, 302 r/w. Section 149 IPC were framed. Similarly against the accused 2 to 7 a charge under Sections 147, 148 and 302 IPC r/w 149 IPC were framed. Against, the eight accused charge under Sections 147, 302 r/w 149 IPC were framed.

5. According to the prosecution, one Velkani @ Kottar(P.W.12) was the eye witness. According to his version, he went along with the deceased to Sarojini Ground. While they were proceeding towards western direction, the first accused has wrongfully restrained and all other accused has attacked with



sickle. As a result of this attack, the deceased succumbed to the injury instantaneously. Immediately after the occurrence he rushed to the deceased house and informed to the deceased wife, Annapushpam and deceased's sister Muthmmal about the occurrence. Thereafter, P.W.12 and one Arulraj(P.W.15) went to the police station and gave a complaint(Ex.P.16). In the said complaint, Arulraj(P.W.15) was an attestor. Thereafter, P.W.18-Kumaraguru, Sub-Inspector of Police, received a complaint at about 21.00 hours and registered the FIR in Crime No.301 of 2004. Immediately on registration of FIR, P.W.18 forwarded the same to the concerned jurisdictional Magistrate and also to the investigating officer. P.W.20-Palanisamy. The investigating officer(P.W.20), took up the investigation and rushed to the scene of occurrence on 23.07.2004 at about 23.00 hours, and in the scene of occurrence, he prepared a observation mahazar and rough sketch in the presence of one Dharmaraj and Poolpandi(P.W.3). Further he also collected blood stained soil and sample soil in their presence. Immediately, thereafter he has also conducted inquest upon the deceased body. During the inquest, he examined the deceased's brother Velkan @ Kottar(P.W.12) and Arulraj (P.W.15) and Annapushpam(P.W.13), the wife of the deceased and forwarded the body of the deceased for postmortem.



6.The postmortem was conducted by P.W.17-Doctor and she has also gave a postmortem report. According to the postmortem report, the following injuries were found in the deceased body:

“Injuriea Noted:

Abrasion: Injury I-4cm x 3 cm in front of Right knee

Abrasion injury 5cm x 3cm in front of left knee

Head:

Injury II: *Gaping heavy cut injury 25cm x 7cm x Bone depth, anterior end is 10cm above the left eye brow. O/DIt has cut the left parietal Bone.*

Injury III: *Horizontal heavy cut injury 35cm x 3cm x Bone depth on the left side. It is 5cm above the upper end of left ear O/DIt has cut the under lying left parietal, left occipital Bone and brain, brain matter exposed.*

Injury IV: *Gaping heavy cut injury even on the back and left side of head and adjoining left side of fact, 25cm x 2cm x cronical cavity deep. It is 4cm in front of upper end of left ear, extending upto occipital protraberece, O/DIt has cut the underlying left Temporal bone, left parietal bone & left occipital bone and exposing the underlying brain matter.*

InjuryV: *Horizontal gaping heavy cut injury seen over the back of head measuring 15cm x 10cm x 10cm deep. Extending from on the left side 4cm below the left ear lobe on the right side 4cm behind his right earlobe. O/Dit has cut the occipital bone*



entering into cronical easily cut the brain at the level of medulla.

Injury VI: *Horizontal cut injury on the left side of face 5cm x 2cm x 1cm x2cm above the upper end of left ear. O/DIt is musle deep.*

Back:Injury VII: *cut injury on the right shoulder blade region 5cm x 2cm x 3cm*

Injury VIII: *cut injury on right scapular area 7cm x 3cm x 1cm x 3cm below the previous injury.”*

7. On 26.07.2004, P.W.20-Investigating Officer arrested the first accused and on the very same day, he came to know that the third accused Jeyaraj @ Pandaram, the fourth accused Sakthivel and the fifth accused Suyambu had surrendered before the Judicial Maigstrate Court, Kulthalai. While so, on 31.07.2004 at about 14.00 hours, when he was in the vehicle check up, while intercepting the jeep bearing Registration No.TCF 2191, he found the presence of the sixth accused(Murugan), seventh accused(Vallimayil) and the eight accused(Rajavel). He arrested all of them. However, the first, seventh and eight accused have not come forward to give any confession statement.



8.However, the sixth accused has given confession statement in the presence of Ayoopkhan(P.W.5) and one Ganesan. In pursuance thereto, the investigating officer has recovered the jeep and also the sickle, as identified by A6(Murugan). The investigating officer has also recorded the statement of the recovery witnesses and the Doctor, who gave postmortem report. Thereafter, he moved an application before the concerned Judicial Magistrate to take a police custody of A2-Jeyaraj @ Pandaram, A4-Sakthivel and A5-Syuambu. A2-Jeyaraj @ Pandaram and A5-Syuambu have given confession statement in the presence of the Village Administrative Officer viz., Maheswaran and Village Assistant viz., James(P.W.6). In pursuance of their confession statement, P.W. 20-Investigating Officer recovered the weapon alleged to have been used in the crime viz., sickle.

9.The investigating officer has also moved an application on 13.08.2004 to conduct identification parade against the accused 5 to 8 viz., Murugan, Vallimayil, Suyambu and Rajavel. He has also made arrangements to send the material objects for Serological report. He also arrested the second accused in the presence of Rajan @ Rasaiya and John Samuvel and recorded the confession statement and recovered the sickle. He also examined the Sub-



Inspector of Police viz, Balakumar, Thiyananvilai Police Station, to establish the motive between the deceased and the accused. After completing the investigation, he laid a charge sheet against all the accused for the offence under Sections 147, 148, 341, 302 r/w 149 IPC.

10.After the case was made over to the Sessions Court, the Sessions/Trial Court has framed the charges against all the eight accused on 04.08.2011. However, subsequent to the framing of charges, the second and third accused have absconded. Hence, the accused names were rearranged and as against other available accused, the trial Court proceeded trial in S.C.No.386 of 2004.

11.Before the trial Court, in S.C.No.386 of 2004, the prosecution relied upon 20 witnesses and marked 25 documents and 12 material objects. On behalf of the accused, one defence document was marked. Though in the previous case[S.C.No.386 of 2004], 20 witnesses were examined, in the subsequent case in S.C.No.325 of 2015 only 14 witnesses were examined and 24 documents were marked. The prosecution has also relied 11 material objects in the latter case. On behalf of the accused in S.C.No.325 of 2015, 3 documents



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were marked. In both the sessions cases, the trial Court has arrived at a conclusion that the prosecution has not proved the charge beyond reasonable doubt. Hence, the trial Court acquitted all the accused in both the cases.

12. Aggrieved with the same, now the victim who is the brother of the deceased has filed both the appeals qua Crl.A(MD)Nos.221 and 223 of 2020.

13. The learned Senior Counsel Mr.V.Kathirvelu, who appeared on behalf of the appellant would contend that the trial Court has miserably failed to take into consideration of the evidence of this appellant, which was sufficiently corroborated by medical evidence. It was further contended by the learned Senior Counsel that the trial Court has given undue importance to the minor discrepancy in the evidences. The learned Senior Counsel would further contend that Ayoopkhan(P.W.5) and James(P.W.6) had spoken about the recovery and confession statement of the accused 3 and 6 to 8, however, the trial Court has eschewed the evidence on the simple ground that the witnesses did not identify the weapon.



14.It is the further contention of the learned Senior Counsel that when the availability of electricity and light was proved on the scene of occurrence, there are no ground to suspect the evidence of the occurrence witnesses. It was also contended by the learned Senior Counsel that when there was an identification parade, unless there is a concrete proof that the accused identity has been exposed, the rejection of identification report is perverse. The learned Senior counsel would also further urge before this Court that the *res gestae* evidence of P.W.16 would demonstrate the presence of the accused at the scene of occurrence along with weapon, which would sufficient to corroborate the evidence of P.W.12 Velkan @ Kottar. However, the trial Court, without gone into the merits of the matter gave perverse finding. Therefore, the learned Senior Counsel prays to interfere with the order of the trial Court in S.C.No.386 of 2004.

15.A similar argument was also advanced in the other appeal. It is the submission of the learned Senior Counsel that the finding recorded by the trial Court in both the cases are perverse and that in S.C.No.327 of 2015 in the splitted up case, the trial Judge has simply followed the order passed in the previous case without going into the individual merits of the matter. Therefore,



contended that the judgment in S.C.No.327 of 2015 is *ipso facto* perverse.

Hence, prays to allow this appeal. The learned Senior Counsel for the appellant has relied upon the following judgments:

“(i)In *Lalji and Others-Vs-State of U.P.*, reported in (1989) SCC (Cri) 211.

(ii)In *Birbal Nath-Vs-The State of Rajasthan & Ors.*, in Crl.A.No.1587 of 2008, dated 30.10.2023.

(iii)In *Guru Dutt Pathak-Vs-State of Uttar Pradesh*, in Crl.A.No.502 of 2015, dated 06.05.2021.

(iv)In *Champaben Govindabhai-Vs-Popatbhai Manilal and Others*, reported in 2009(13) SCC 662.

(v)In *Tamilmaran-Vs-State rep. by Inspector of Police, Paravakottai Police Station, Mannargudi Taluk,Thiruvarur District*, reported in 2007-1-L.W.(crl.)514.”

16.In addition to the argument of the learned Senior Counsel, on behalf of state, the learned Additional Public Prosecutor would submit that there is no delay in registering the FIR and forwarding the same to the concerned jurisdictional magistrate. The learned Additional Public Prosecutor



would further submit that the motive has been explained by examining the Inspector of Police, Thiyasanvilai Police Station and has also proved through the evidence of Velkan @ Kottar(P.W.12). It is further contended that P.W.16 evidence would demonstrate the presence of the accused in the scene of occurrence with deadly weapon. Therefore, contended that the finding recorded by the trial Court is perverse and liable to be interfered with.

17.Per contra, the learned Senior Counsel Mr.R.Gandhi appearing on behalf of the respondents 1 and 2 in Crl.A(MD)No.223 of 2020, would contend that the argument advanced by the learned Senior Counsel that in the splitted up case, the trial Court has simply followed the earlier judgment, is a misleading argument, as the trial Judge has independently analysis the evidence. It was also contended by the learned Senior Counsel that except the interested testimony of the deceased's brother Velkan @ Kottar, all other occurrence witness turned hostile. Further though the recovery witnesses P.W.5 and P.W.6 had spoken about the confession, had not identified the weapon recovered from the concerned accused. Therefore, contended that the finding of the trial Court is the possible finding and does not require any interference by this Court.



18.The learned Senior Counsel would further submit that the presence of P.W.12 Vekan @ Kottar in the scene of occurrence is very much doubtful. It is the submission of the learned Senior Counsel that at the time of occurrence, there was a movement of people near the scene of occurrence. However, the non-examination of any of the independent witnesses assumes much significance. The learned Senior Counsel further submits that the trial Court has rightly taken into consideration of the unnatural conduct of P.W.12, and the testimonies of the wife of the deceased Annapushpam has categorically found that there was no motive between the accused and the deceased in respect of the conduct of the temple festival. It was further contended that on apprehension raised by the trial Judge about the presence of Velkan @ Kottar(P.W.12) at the scene of occurrence, in the backdrop of the evidence of Arulraj(P.W.10) is probable and possible view. Even P.W.3-Poolpandi evidence would prove the falsity over the presence of Velkan @ Kottar(P.W.12) at the scene of occurrence. It was further contended that according to the prosecution, the deceased and Velkan @ Kottar(P.W.12) have went for tea, whereas P.W.1 stated that there was no tea shop. It is further contended that the arrest and confession of the accused are doubtful. The learned counsel appearing for A2 and A3 would further submit that there are material contradictions, which could



be established from mahazar and forensic report and also the motive is very much flimsy.

19.The learned counsel for A4 and A8 would also further reiterate the submission made by the learned Senior Counsel. The learned counsel would further submit that the conduct of P.W.12 immediately move away from the scene of occurrence, that too without even taking any steps to save his brother is unnatural conduct. It was also contended by the learned counsel that the long delay in conducting the identification parade would make the very identification become insignificant.

20.All the learned counsels appearing for all the respondents would confer that whenever the appeal has been filed against the order of acquittal, while exercising the jurisdiction under Section 378 Cr.P.C, the view expressed by the learned trial Judge is to be respected, unless the same is perverse. It is the submission of all the learned counsels that the acquittal order passed by the learned trial Judge in both the cases is possible view and that the very order of acquittal vest a double presumption of innocence against these respondents and that the appellant was not able to put-forth any ground to say the impugned



judgment is perverse one. Hence, the learned counsel for the respondents would pray to dismiss the said appeals.

21.On behalf of the respondents, the following judgments are relied upon:

(i)In Mohd.Akhtar @ Kari & Ors.,-vs-State of Bihar & Anr., reported in 2019 1 Supreme 125.

(ii)In Amar Singh-vs-State (NCT of Delhi), reported in (2020)19 Supreme Court Cases 165.

(iii)In Ravi Sharma-vs-State(Government of N.C.T of Delhi) & Anr., reported in reportd in 2022 LiveLaw(SC) 615.

22.We have given our anxious consideration on the submissions made by either side.

23.On harmonious reading of the judgment in S.C.No.386 of 2004 and S.C.No.327 of 2015, the learned Judges have acquitted the respective accused on three of the following major grounds:



(i)In both the cases, the trial Court disbelieved the presence of sole eye witness Velkan @ Kottar (P.W.12) / (P.W.1).

(ii)The motive was not proved.

(iii)The trial Court has also felt that in view of long delay in conducting the identification parade, the same loses its significance and

(iv)lastly, the trial Court has also disbelieved the recovery of weapon. Coupled with the inability of Velkan @ Kottar-P.W.12(the only available ocular witness) to identify the weapon.

24.It is pertinent to mention here that though both the cases ended in acquittal, the reasonings are different and both the Judges independently given their own reasoning to arrive at the said conclusion. Under Section 378 Cr.P.C., while considering the appeal, the prime duty of this Court is to see whether the view expressed by the trial Judge is possible one or not. It is pertinent to mention here that whenever this Court considering an appeal under Section 378 Cr.P.C., has right to re-appreciate the entire evidence independently. At the same time, it is the duty of this Court to give due importance to the opinion of the trial Court, provided if the same arrived at a proper appreciation of evidence.



25.Before we dwell into the factual aspects, this Court deems it appropriate to discuss the judgments relied upon by the respective counsels.

26.The learned Senior Counsel appearing on behalf of appellant relied upon the judgment of the Hon'ble Supreme Court in ***Lalji and Others-Vs-State of U.P.***, reported in ***(1989) SCC (Cri) 211***, wherein the Hon'ble Supreme Court has held that while considering the charge under Section 147 of IPC, two essential ingredients has to be considered. (i)Commission of an offence by any member of an unlawful assembly and (ii)such offence must have been committed in prosecution of the common object of that assembly or must be such as the members of that assembly knew the occurrence likely to be committed. Therefore, when these two ingredients have established then whoever being the member of such assembly is to be held guilty.

27.The learned Senior Counsel has also relied upon the judgment of the Hon'ble Supreme Court in ***Birbal Nath-Vs-The State of Rajasthan & Ors.***, in ***Crl.A.No.1587 of 2008, dated 30.10.2023***, wherein the Hon'ble Supreme Court has held that in a rural setting, the degree of articulation of such a witness



in a Court of Law are relevant considerations while evaluating the credibility of witnesses. Moreover, the lengthy cross examination of a witness may invariably result in contradictions. The Hon'ble Supreme Court further held that the contradictions would only help to “discredit” a witness. Therefore, unless and until the former statement of this witness is capable of “discrediting” a witness, it would have a little relevance.

28.The learned Senior Counsel has also relied upon the latest judgment of the Hon'ble Supreme Court in ***Guru Dutt Pathak-Vs-State of Uttar Pradesh, in Crl.A.No.502 of 2015, dated 06.05.2021***, wherein the Hon'ble Supreme Court has followed the decision in ***Kuldeep Singh-Vs-Commissioner of Police(1999) 2 SCC 10*** and held that, if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and that no reasonable person would act upon it, then such finding could become a perverse finding.

29.The learned Senior Counsel has also relied upon the judgment of Hon'ble Supreme Court in ***Champaben Govindabhai-Vs-Popatbhai Manilal***



and Others, reported in **2009(13) SCC 662**, held that if the order of acquittal is perverse or shocks the conscience of the higher Court, the finding of acquittal can be reversed.

30.The learned Senior Counsel has also relied upon the judgment of the Hon'ble Supreme Court in ***Koli Lakhman Bhai Chanabhai-Vs-State of Gujarat*** reported in **(1999) 8 SCC 624**, wherein the Hon'ble Supreme Court has held that the evidence of a hostile witness remains admissible and is open for a Court to rely on the dependable part thereof as found acceptable.

31.On the other hand, the learned counsels appearing for the respondents has relied upon the judgment of the Hon'ble Supreme Court in ***Ravi Sharma-Vs-State(Government of N.C.T. Of Delhi) and Anr.***, reported in **2022 Live Law(SC)615**, wherein the Hon'ble Supreme Court has relied ***Babu-Vs-State of Kerala***, reported in **(2010) 9 SCC 189**, wherein the Hon'ble Supreme Court in Babu's case(cited supra) has held as follows:

“20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into



consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is “against the weight of evidence”, or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn. [(1984) 4 SCC 635], Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons [1992 Supp (2) SCC 312], Triveni Rubber & Plastics v. CCE [1994 Supp (3) SCC 665], Gaya Din v. Hanuman Prasad [(2001) 1 SCC 501], Aruvelu v. State, [(2009) 10 SCC 206] and Gamini Bala Koteswara Rao v. State of A.P. [(2009) 10 SCC 636]).”

It is further observed, after following the decision of this Court in Kuldeep Singh v. Commr. of Police [(1999) 2 SCC 10], that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse, and the findings would not be interfered with.”

32. In yet another judgment in ***Moh., Akhtar @ Kari & Ors., -Vs-State of Bihar and Anr.***, reported in **2019 1 Supreme 125**, the Hon'ble Supreme Court has held that if the acquittal is justified a probable view, it should not be interfered with.



33.The learned counsel appearing for the respondents has also relied upon the Full Bench judgment of the Hon'ble Supreme Court in ***Amar Singh-Vs-State(NCT of Delhi)*** reported in ***(2020) 19 Supreme Court Cases 165***, wherein the Hon'ble Supreme Court has held that the unnatural conduct of the alleged eye witnesses would suffice to disbelieve his evidence.

34.Therefore, from the above precedent, what emerges are

(i)unless the finding of the trial Court is perverse, and patently illegal, though the Higher Court having a different view cannot be a ground to interfere with the view expressed by the trial Court.

(ii)It is equally pertinent to mention here that when the acquittal order was passed by the trial Court then there is a double presumption of innocence in favour of the accused.

Therefore the sum and substance of the above precedents would be this Court should see, whether the view expressed by the trial Court is possible and probable view.



35. Since we are considering two appeals arising out of two different judgments, this Court deems it appropriate to find out whether the judgment of each of the trial Court is a possible and probable view. Hence, this Court deems it appropriate to discuss each judgment separately.

36. Let us consider whether the view expressed by the Sessions Judge in S.C.No.386 of 2004 is possible and probable view.

37. While looking at the prosecution case, they relied upon P.W.1, P.W.2 and P.W.12 as the eye witnesses. But unfortunately, P.W.1 and P.W.2 turned hostile. The only available witnesses to support the prosecution case is P.W.12, who is none other than the brother of the deceased. The trial Court disbelieved the presence of P.W.12 at the scene of occurrence. The reason put forth by the trial Court to disbelieve the presence of P.W.12 at the scene of occurrence is on the basis of the evidence of P.W.15(Arulraj).

38. According to Velkan@ Kottar(P.W.12) immediately after the occurrence, P.W.15, who was already standing in the nearby place, rushed to the scene of occurrence. While cross-examining P.W.15(Arulraj), he has not



supported the statement of P.W.12. According to P.W.12, immediately after the occurrence, when P.W.15 comes to the scene of occurrence both of them rushed to the residence of the deceased Natarajan and informed to his wife and his sister P.W.14(Muthammal). Thereafter, went to the police station and gave a police complaint(Ex.P.16), wherein P.W.15 has signed as an attestor. Therefore, according to P.W.12 evidence.

(i)P.W.15 was present at the scene of occurrence.

(ii)P.W.12 and P.W15 rushed to the deceased's house.

(iii)P.W.12 and P.W.15 went to the police station and gave complaint-Ex.P.16.

39.But P.W.15 did not support the case projected by P.W.12 and what P.W.15 stated is he signed in Ex.P.16-complaint at the deceased's residence. That too in a white blank paper. Therefore, apparently there is a wild contradiction between the evidence of P.W.12 and P.W.15. To put it other words, P.W.12 being the interested witness, it is always safe to except a corroboration. But in our case, there are no corroborative witness to support P.W.12 evidence. In view of the same, P.W.12 presence was doubted. Therefore, we are of the view that the reasoning of trial Court cannot be held to



be perverse and the same is more reasonable and probable view.

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40.His absence in the scene of occurrence could be further demonstrated through the unnatural conduct of P.W.12. Immediately after the occurrence, he did not care about his brother's life, who was in pool of blood and he did not even touch his brother's body. Apart from that, the very genesis of occurrence being complaint has also been tainted with suspicion.

41.Therefore, from cumulative analysis of the above discussion, this Court is in full agreement with a view expressed by the trial Court. But the learned Senior Counsel appearing on behalf of the appellant would contend that P.W.12 evidence is corroborated through the doctor evidence P.W.17. But this Court is not pursued with the submission made by the learned Senior Counsel on the simple ground that P.W.12 was not in a position to identify the weapon used against each of the assailant. Therefore, all these aspects would only lead to the irresistible conclusion of existence of reasonable suspicion against the presence of the sole ocular witness P.W.12.



42.Coming to the motive part, it was an intimidation about two months back from the date of occurrence, and such intimidation had taken place in the presence of P.W.12, P.W.13 and P.W.14. Apart from these interested witnesses, there are no other witnesses had spoken about the issue in respect of the temple. Even according to P.W.13 as against the first accused(Murugaraj), there was no previous enmity. P.W.4 has not also spoken anything about the previous enmity. The finding arrived by the trial Court that if it had really been any intimidation to the deceased Natarajan, he would have given a police complaint. Since there was no complaint, the trial Court has disbelieved the motive also. This Court finds that there is no perversity in the findings recorded by the trial Court, further such finding appears to be more probable and reasonable.

43.Coming to the identification parade, on the ground that there was an inordinate delay of 34 days from the date of arrest of A5 and A8, the trial Court has disbelieved the identification of those accused. Since P.W.15 turned hostile, the only witness available to identify the alleged accused is P.W12, who is none other than the brother of the deceased. At this juncture, considering the long delay of 34 days in conducting the identification parade, the possibility of



tutoring to P.W.12 could not be ruled out. Therefore, the reasoning assigned by the trial Court in disbelieving the identification parade also a probable and reasonable view.

44.Coming to the recovery witness of P.W.5-Ayooopkhan, who was the witness to the recovery of weapon from A6-Murugn, he was not in a position to identify the nature of weapon recovered from A6. Furthermore, he also categorically admitted that he signed in the relevant papers at the station itself. Only on the above ground, the trial Court disbelieved the recovery from the sixth accused, which is more probable and infact a perfect view.

45.Coming to the confession statement of A3, P.W.6, who was the witness to the confession statement was examined. But he was also not in a position to identify the weapon recovered from A3. Therefore, this Court is of the firm view that the order of acquittal passed against these accused's based upon the suspicion over the presence of the sole eye witness P.W.12, delay in identification parade and in respect of the unreliability over the recovery coupled with suspicion over the motive, the finding reached by the trial Court is the more probable view. Even for argument sake, if we presume that this is also



another view possible, that cannot be a reason to interfere with the findings recorded by the trial Court in S.C.No.386 of 2004 as it is not perverse and is based upon the acceptable evidence.

46.Coming to the findings recorded in other criminal appeal in S.C.No.327 of 2015 against A2 and A3 viz, Raman @ Jeayraman and Jeyaraj @ Pandaram, it was the contention of the learned Senior Counsel for the appellant that the sessions Judge has blindly followed earlier acquittal order passed in S.C.No.386 of 2004 in view of the ruling reported in 2007-1-L.W(Crl.) 514 [Tamilmaran-Vs-State]. But this Court has carefully perused the judgment of the trial Court, though the trial Court has concurred with the finding of disbelieving the presence of Velkan @ Kottar, disbelieving the recovery and disbelieving identification parade, but gone a different reasoning. The trial Court found that since there were 150 families are in the said village, there is no possibility of Natarajan to conduct Utchimakali Amman Temple festival individually, and that had there been any such prominent participation of deceased for conducting the temple festival, the prosecution would have submitted the account maintained by the deceased. Further the trial Court has also found that since there was no complaint immediately after the alleged



intimidation, the case of prosecution in respect of motive has also disbelieved.

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47. Coming to the presence of P.W.1 (P.W.12 in previous case) Velkan @ Kottar, they came to the scene of occurrence only to have tea. Whereas there are no tea shop on the western side, and that even before the scene of occurrence there are many tea shop. Therefore, the reason for P.W.1 and the deceased to come to the scene of occurrence only to have a tea is highly doubtful, and disbelieved by the trial Court. Further the suspicion over the presence of P.W1 Velkan @ Kottar has been further elaborated by the trial Court by taking into consideration of his unnatural conduct immediately after the occurrence. There is not even a small stain of blood in his dress, though the deceased was in pool of blood. It is an admitted case that P.W.1 did not even try to give first aid to his deceased brother has also caused serious suspicion about his presence of scene of occurrence.

48. The prosecution has relied upon P.W.3-Amalraj, who was examined as P.W.16 in the earlier case as *res gestae* evidence. But the trial Court has disbelieved his evidence on that ground within 10 seconds it is impossible to memorise the registration number of jeep and each of the weapon



carried by the assailant. The trial Court also disbelieved the presence of electric light as the observation mahazar did not mention about the existence of any electric lamp post. To crown it all, though the deceased's vehicle was in the scene of occurrence, P.W.1-Velkan @ Kottar has went to the deceased's residence by walk if he had been in the scene of occurrence, he would have definitely taken the vehicle to reach the deceased's residence.

49.In respect of recovery witness, the trial Court disbelieved the evidence as of the recovery witness as they were not in a position to identify the accused. Therefore, this Court is of the firm view that even in this case, the reasoning given by the trial Court is the possible and probable view. Therefore, in both the session cases, the trial Court reached the right conclusion of acquittal.

50.At this juncture, it is relevant to refer the judgment relied upon by the respondent in ***Sambasivan-Vs-State of Kerala***, reported in ***(1998) 5 SCC 412***, wherein the Hon'ble Supreme Court held that unless the judgment of the trial Court is patently illegal or the conclusion arrived at by the trial Court were



wholly untenable, the High Court under Section 378 Cr.P.C., cannot interfere with the finding of the trial Court.

51.In *Atley-Vs-State of U.P.*, reported in *AIR 1955 SC 807*, the Hon'ble Supreme Court has held that it is well established rule that, by the order of the acquittal, the presumption of innocence of the accused is further strengthened. Similarly, in *Hakeem Khan-Vs-State of M.P.*, reported in (2017) *5 SCC 719*, the Hon'ble Supreme Court has held that even if there is another “possible view” and that the possible view of the trial Court is not agreeable for the High Court, even then such “possible view” recorded by the trial Court cannot be interdicted.

52.In view of the above proposition and the precedent discussed elsewhere in this order, when there is a probable and reasonable view taken by the trial Court, and that when the accused had a benefit of double presumption of innocence by way of the order of acquittal passed by the trial Court, this Court has no reason to interfere with the well merited order of the learned Sessions Judge. The appellant has also failed to demonstrate the perversity of



Crl.A(MD)Nos.221 and 223 of 2020

the acquittal order. We made it clear that, we are conscious of the fact that guilty man should not be allowed to get away with it, because of truth suffers some infirmity. But in the case in hand the trial Court has rightly appreciated the evidence and arrived at right, probable and possible conclusion. Therefore, this Court could not find any merits in both the appeals and both the appeals are liable to be dismissed.

53.In the result, both the criminal appeals in Crl.A(MD)Nos.221 and 223 of 2020 are dismissed.

(G.J.,J.) (C.K.,J.)
28.03.2024

NCC:Yes/No
Index:Yes/No
Internet:Yes/No

DR G. JAYACHANDRAN,J.
AND



Crl.A(MD)Nos.221 and 223 of 2020

C.KUMARAPPAN,J.
Ns

To

- 1.The I Additional District and Sessions Judge,
Tirunelveli.
2. The Inspector of Police,
Thiyasanvilai Police Station,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

Crl.A(MD)Nos.221 and 223 of 2020

28.03.2024