



**CrI.A.(MD)No.76 of 2020**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**RESERVED ON: 23.08.2024**

**PRONOUNCED ON : 01.10.2024**

**CORAM**

**THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN**

**AND**

**THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD**

**CrI.A(MD)No.76 of 2020**

**S.Murugan**

**... Appellant**

**VS**

**1.Alagesan**

**2.Palanisamy**

**3.Balu @ Balasubramani**

**4.The Inspector of Police,  
Kodaikanal Police Station,  
Dindigul District.**

**(in Cr.No.223 of 2015)**

**...Respondents**

**PRAYER: Criminal Appeal filed under Section 372 of the Criminal Procedure Code, to set aside the judgment of acquittal, dated 22.11.2019 made in S.C.No.172 of 2017 on the file of the Additional District and Sessions Court, Palani and convict the respondents 1 to 3.**



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For Appellant : Mr.S.C.Herold Singh  
For R1 and R2 : Mr.N.Sathish Babu  
For R3 : Mr.K.Manikandan  
For R4 :Mr.A.Thiruvadi Kumar  
Additional Public Prosecutor  
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### **JUDGMENT**

(Judgment of this Court was delivered by **C.V.KARTHIKEYAN, J.**)

The Criminal Appeal had been filed by the de-facto complainant/PW-1/father of the deceased, questioning the judgment dated 22.11.2019 in S.C.No.172 of 2017 by the learned Additional District and Sessions Judge, Palani, by which judgment, the accused therein were acquitted of all charges.

2.The prosecution had laid a final report after investigation of the allegations in FIR in Cr.No.223 of 2015 registered by the Inspector of Police, Kodaikanal Police Station in Dindigul District at around 23.00 hours on 12.05.2015 against three name accused, Alagesan, Palanisamy and Balu @ Balasubramani for offences punishable under Sections 342 and 302 IPC. The final report filed against the accused had been taken cognizance as P.R.C.No.13 of 2015 by the learned Judicial Magistrate, Palani. The

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learned Judicial Magistrate complied with the stipulations under Section 207 Cr.P.C., and thereafter, since the offence under Section 302 IPC was exclusively triable by a Court of Sessions, had committed the case to the Principal Sessions Court at Dindigul. The learned Principal Sessions Judge had then taken the case on file as S.C.No.172 of 2017 and made it over for trial before the Additional District and Sessions Court at Palani.

3.The learned Additional District and Sessions Judge, Palani, framed charges against the accused. A1 was charged with commission of offence punishable under Sections 342 and 302 IPC. A2 was charged with commission of offence punishable under Sections 342 and 302 IPC r/w 34 of IPC. A3 was charged with commission of offence punishable under Sections 342 and 302 IPC r/w 34 IPC. The accused denied the charges and claimed to be tried. The prosecution examined PW-1 to PW-15 witnesses and marked Ex-P1 to Ex-P23 exhibits and also produced MO-1 to MO-6 material objects. On the side of the accused, Ex-D1 was marked.

4.On conclusion of trial, the learned Additional District and Sessions Judge, Palani, acquitted the accused of all the charges by judgment dated



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22.11.2019. Aggrieved by said judgment, the de-facto complainant/PW-1 has filed the present Criminal Appeal.

5.For conducive narration of facts, the appellant would be termed as appellant/de-facto complainant, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents would be termed as A1, A2 and A3 and the 4<sup>th</sup> respondent would be termed as the respondent in the Sessions Case.

6.The case of the prosecution is that on the occasion of the function of manju virattu at the Temple festival at Mariamman Temple of Polur Village, Palani, Dindigul District on 10.05.2015 at around 02.00 pm, A1, Alagesan, was creating trouble under the influence of alcohol right in the middle of the place, where the function was being held. Subramani, the son of the appellant/de-facto complainant, who was working in Coimbatore had come down to his native village Polur for the Temple festival. He and also his friends, Anbalagan, Sivaraj and Loganathan questioned the behavior of A1 and escorted A1 out.



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7.It is the case of the prosecution that owing to this act, A1, nurtured a motive against Subramani, son of the appellant/de-facto complainant. It is the further case of the prosecution that on the next day/11.05.2015 at around 09.15 pm., when the aadal paadal festivities were going on in the Temple, Subramani and his friends Loganathan and Ramesh had gone outside to relieve themselves and at that time, PW-1, who was watching the aadal paadal festivities, heard a loud scream from Loganathan. Immediately, he and others, Boothapandi and Prabhu ran to see what had happened. It is the case of the prosecution that A2 and A3 held the hands of Subramani and A1 stabbed him on the right rib portion causing damage to the ribs and liver.

8.It is the further case of the prosecution that Subramani was then taken in a two wheeler to the Government Hospital at Kodaikanal and even before they could go far, he died. In the meanwhile, the ambulance which was summoned also came there and the personnel in the ambulance informed that Subramani had died. In this connection, the appellant/PW-1 lodged a complaint at around 05.00 am on 12.05.2015, consequent to which, FIR in Cr.No.223 of 2015 was registered by the Kodaikanal Police Station for commission of offences punishable under Sections 342 and 302 IPC.



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The appellant/de-facto complainant had given three names in the complaint, namely. Alagesan (A1), Palanisamy (A2) and Balu @ Balasubramanian (A3).

9.During trial, the prosecution examined PW-1 and PW-2 as eye witnesses to the occurrence.

10.PW-1, Murugan, in his evidence, had stated the aforementioned facts in his chief examination and however, stated that he saw his son Subramani lying unconscious with a stab injury on the right side rib portion. He was informed by Loganathan (PW-2) that A2 and A3 had caught hold of the hands of Subramani and A1 had stabbed him. He then stated that Muthu (not examined) and Thangamani, PW-6 had taken his son Subramani in a motorcycle to Government General Hospital at Kodaikanal. PW-1 and others followed in another motorcycle, but even before they could go to a short distance, they found that his son had died. In the meanwhile, the ambulance came after about one hour and the personnel therein also informed that his son had died. The Police then came and shifted the body to Government General Hospital at Kodaikanal. PW-1 gave a complaint



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only at 05.00 am on the next day, 12.05.2015.

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11.No explanation had been given by PW-1 as to why he did not give the complaint immediately or atleast earlier.

12.During his cross examination, he stated that he came to the scene of crime only on hearing a noise. He also admitted during cross examination that A3 was not present, when the altercation took place on the previous day on 10.05.2015.

13.He further admitted that after the occurrence, another FIR in Cr.No.224 of 2015 had been registered on 12.05.2015 at 11.00 am., on a complaint given by Muthu Lakshmi in which he (PW-1), Paulraj, Sivaraj and Kumaresan had been named as accused for offences punishable under Sections 294(b), 324, 427 and 506(ii) IPC and Section 3(1) of TNPPDL Act, 1992. A copy of this FIR had been marked as Ex-D1 during the course of trial.



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14.The prosecution further examined Loganathan as PW-2.

According to PW-2, Loganberry, he had witnessed the occurrence. PW-2 stated about the earlier incident which took place on 10.05.2015, when A1 was creating ruckus at the time when jallikattu was happening. He also stated that he along with the deceased and others had sent away A1 questioning his behavior. He further stated that on 11.05.2015, when he and the deceased and Ramesh, PW-3 were walking at the time when aadal padal festivities were going on, A2 caught hold of the left hand of the deceased and A3 caught hold of the right hand and A1 stabbed the deceased with a knife. The witness then cried loud. At that time, other people came there. Since it would take time for the ambulance to come, they had taken Subramani in a motorcycle, but even before they could go a short distance, he died. During his cross examination, PW-2 stated that there was no prior enmity between A2 and the deceased.

15.The prosecution further examined PW-3, Ramesh, who was declared hostile, since he did not support the case of the prosecution. The prosecution further examined Boothapandi, PW-4, who was not a direct eye witness to the occurrence, but who went to the scene of crime after hearing



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a cry. The prosecution further examined Prabhu as PW-3 who also did not directly witness the occurrence, but went to the scene of crime after hearing the loud noise. The prosecution further examined Thangamani, PW-6 who also did not directly witness the occurrence, but assisted in taking the deceased to the hospital in motorcycle.

16.The prosecution further examined Sivaraj, PW-7, who spoke about the incident on 10.05.2015, but did not see the occurrence on 11.05.2015 and had gone to the scene of occurrence only on hearing a noise. The prosecution further examined Thangaraj, PW-8, who was also declared hostile. The prosecution further examined Vellaiyan, PW-9, who was also declared hostile. The prosecution further examined Bala, PW-10, who was also been declared hostile. The prosecution also examined Athikari, PW-11, who was also declared hostile.

17.The prosecution further examined Thamaraikannan, PW-12, who was Grade-I Police Constable at Kodaikanal Police Station. He had taken the express tapal containing FIR and the complaint to be served on the Judicial Magistrate. He stated that the Judicial Magistrate, Kodaikanal was



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on leave and therefore, he had handed the papers at 02.45 pm on 12.05.2015 to the Judicial Magistrate, Nilakottai. The prosecution further examined Gaspar, as PW-13, who was in-charge of Kodaikanal Police Station on 12.05.2015 and who had registered the FIR in Cr.No.223 of 2015 at 05.00 am., for offences punishable under Sections 342 and 302 IPC. He had also later registered FIR in Cr.No.224 of 2015 against PW-1, and others for offence punishable under Sections 294(b), 324, 427 and 506(ii) IPC and Section 3(1) of TNPPDL Act, 1992, on a complaint given by Muthu Lakshmi. The prosecution further examined Dr.Aravindh, as PW-14, who conducted the postmortem and issued postmortem certificate, Ex-P12.

18.The prosecution further examined A.Nagarajan, as PW-15. He was the Inspector of Police at Kodaikanal Police Station on 12.05.2015. He had taken up the investigation in FIR in Cr.No.223 of 2015 and had proceeded to the scene of crime and had prepared a rough sketch, Ex-P13 and observation mahazar, Ex-P14 in the presence of Thangaraj (PW-8) and Vellaiyan (PW-9). He also recovered the blood stained sand (MO-1) and sand without blood stain (MO-2) under athatchi. He then recorded the statements of Murugan (PW-1), Loganathan (PW-2), Ramesh (PW-3),



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Boothapandi (PW-4), Prabhu (PW-5), Thangamani (PW-6), Muthu (not examined), Anbalagan (not examined), Sivaraj (PW-7), Thangaraj (PW-8) and Vellaiyan (PW-9).

19.He then conducted inquest over the dead body of Subramani at the Government Hospital at Kodaikanal in the presence of panchayatars and prepared inquest report, Ex-P16. He then gave a requisition letter for conducting postmortem over the dead body, Ex-P11. After postmortem, he handed over the dead body to the relatives for cremation. He forwarded the clothes of the deceased under Form-95 to the Court. The clothes were produced as MO-3, MO-4 and MO-5.

20.He then arrested A1 on 13.05.2015 at 08.45 pm in the presence of witnesses, Athikari (PW-11) and Bala (PW-10). He recorded the confession of A1 and the admitted portion of the same had been marked during trial as Ex-P17. He then recovered the knife (MO-6) used for the offence under athatchi, Ex-P8. He also recorded the statements of Athikari, PW-11 and Bala, PW-10. He then produced A1 before the Judicial Magistrate Court, Kodaikanal to be remanded to the judicial custody. He then sent the



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material objects for chemical examination by forwarding letters to the Judicial Magistrate. The letters were marked as Ex-P19 and Ex-P20. He then recorded the statement of Tmt.Annamal Mary, Assistant Director, Forensic Science Department. He obtained the chemical analysis report and serology report, Ex-P21 and Ex-P22. He also obtained viscera report, Ex-P23. He then recorded the statement of Dr.Aravindh, PW-14, who conducted the postmortem.

21.He then arrested A3, Balu @ Balasubramani on 09.08.2015 at around 07.00 am. He also arrested A2, Palanisamy on the same day at 03.00 pm. Thereafter, he also recorded the statements of Sundarapandy, Grade-I Police Constable (not examined) and Gaspar, Special Sub Inspector of Police, PW-13 who registered the FIR. On conclusion of investigation, he filed final report before the Judicial Magistrate Court at Kodaikanal.

22.The learned Trial Judge on analysis of the evidence held that the prosecution had not proved the motive and had not explained the injury found on the deceased and had also held that the recovery of MO-6 knife was not believable and that all the witnesses who were examined were



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interested witnesses particularly, PW-2, who was the only eye witness.

Observing as above and also holding that the prosecution had therefore not proved the charges against the accused beyond reasonable doubt, the learned Trial Judge had acquitted the accused of all charges. This Criminal Appeal had been filed by PW-1/de-facto complainant/father of the deceased.

23.Heard arguments advanced by Mr.S.C.Herold Singh, leaned Counsel for the appellant, Mr.N.SathishKumar, learned Counsel for R1 and R2, Mr.K.Manikandan, learned Counsel for R3 and Mr.A.Thiruvadi Kumar, learned Counsel appearing for R4/respondent in the Session Case.

24.An analysis of the narration of the facts recorded during trial would show that there was only one eye witness, namely, PW-2, Loganathan. The appellant herein/PW-1/father of the deceased had not directly seen the accused causing the injury which proved fatal to the deceased. He had arrived in the scene of crime only after hearing the cry of PW-2, Loganathan and when he arrived, he saw his son lying unconscious.



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25.The motive which had been attributed by the prosecution is that on 10.05.2015, in the afternoon at around 02.30 pm., when manju virattu function was going on in the Mariamman Temple at Polur in Palani Taluk, Dindigul District, A1 was creating ruckus under the influence of alcohol in the middle of the place. A1 was questioned about his conduct by the deceased and also by PW-2, Loganathan, PW-7, Sivaraj and Anbalagan (not examined). Both PW-2 and PW-7 had, in their chief examination, spoken about this incident which had taken place on 10.05.2015 at around 02.15 pm.

26.The learned trial Judge had stated that the said incident could not be considered as sufficient motive for causing the death of the deceased by A1. It was also observed by the learned Trial Judge that the injuries as spoken by the witnesses differed from the nature of the injuries as found in the postmortem report, Ex-P12. In Ex-P12, there were two injuries, which had been noted, namely,

*“(1)Laceration of size 5 x 1 x 5 cm in right back at the level of 8<sup>th</sup> - 7<sup>th</sup> rib – Stab injury;*

*(2)Crush injury present in 6 toes except little toe in dorsal aspect of left foot – bones exposed.”*



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27.The opinion given for the cause of death was as follows:

*“shock and hemorrhage due to laceration of lower lobe of right lung with hemothorax.”*

28.The learned Trial Judge had stated that this injury was in variance to the evidence of PW-2, who said to be the eye witness. PW-2 had stated that the stab injury was on the right rib, but in Ex-P12, the cause of death was due to the injury in right lung. The trial Judge had therefore held that the benefit of doubt should be extended to the accused in this regard. The trial Judge had further observed that the prosecution had not established the cause of the second injury found on the deceased.

29.The learned Trial Judge had acquitted the accused on the ground that recovery of MO-6, the alleged knife had not been proved in manner to law. In Ex-P18, the mahazar prepared for recovery of MO-6, it had only been stated that it had been recovered near the Government Middle School compound at Polur. The actual place, where it had been kept hidden had not been stated. It had therefore been very strongly observed by the learned



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trial Judge that the prosecution had not proved the recovery of MO-6, the alleged knife said to have been used for the offence. The witnesses, who were present at the time of recovery of the knife, namely, PW-11, Athikari and PW-10, Bala, did not support the case of the prosecution and were both declared hostile. Even in Ex-P17, the admitted portion of confession A1, he had only stated that if he is taken, he would show the place where he had thrown the knife and would recover it. The learned Trial Judge had stated that in the admitted portion of the confession, a discovery would include not only the physical object, but also the place from which it had been produced and the knowledge of the accused of both object and the place. It had therefore been stated that since the specific place had not been mentioned, the recovery is highly doubtful and further, witnesses had not supported the case of the prosecution in that regard.

30.In ***(2004) 10 SCC 6547 (Anter Singh vs State of Rajasthan)***, the

Hon'ble Supreme Court had held as follows:

*“15.At one time it was held that the expression “fact discovered” in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact, now it is fairly settled that the expression “fact discovered” includes not only the physical object produced, but also the place from which it is produced and the knowledge of*



*the accused as to this, as noted in Pulukuri Kottaya case [AIR 1947 PC 67 : 74 IA 65 : 48 Cri LJ 533] and in Udai Bhan v. State of U.P. [AIR 1962 SC 1116 : (1962) 2 Cri LJ 251]”*

31.The learned Trial Judge had also stated that two injuries had been noted in the postmortem certificate, Ex-P12, but the prosecution had not explained the second injury, which is a crush injury in four toes of the left foot of the deceased. The learned Trial Judge had also observed that all the witnesses who had been produced were interested witnesses and therefore, held that benefit of doubt should be extended to the accused and had acquitted the accused.

32.In **2008 10 SCC 450, Ghurey Lal vs the State of Uttar Pradesh**, the Hon'ble Supreme Court had laid down the principles to overrule or otherwise disturb a trial Court judgment of acquittal. In para 17, it had been held as follows:

*“70.In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallised by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:*



*1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.*

*A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:*

*(i) The trial court's conclusion with regard to the facts is palpably wrong;*

*(ii) The trial court's decision was based on an erroneous view of law;*

*(iii) The trial court's judgment is likely to result in "grave miscarriage of justice";*

*(iv) The entire approach of the trial court in dealing with the evidence was patently illegal;*

*(v) The trial court's judgment was manifestly unjust and unreasonable;*

*(vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.*

*(vii) This list is intended to be illustrative, not exhaustive.*

*2. The appellate court must always give proper weight and consideration to the findings of the trial court.*

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

33. In the instant case, the following factors emerge:

(a) Even though the prosecution had projected PW-1 as eye witness, in his evidence, he stated that he did not directly witness the occurrence, but went there on hearing the crying of PW-2 and saw the deceased lying down unconscious. Therefore, he cannot be categorised as an eye witness.



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(b)PW-2 in his evidence had stated about the occurrence. But during his cross examination, he also stated that on 11.05.2015, during the Temple festival, at the cattle shed, he along with Sivaraj (PW-7), Anabalagan (not examined), Ramesh (PW-3), Thulasidasan (not examined) and unknown three other persons consumed alcohol from 07.00 pm till 08.45 pm. He also stated that at that time, the deceased Subramani was also there.

(c)He further stated that at 08.45 pm, he and Subramani (deceased) and Ramesh (PW-3) left the cattle shed in a bike and went to the village.

(d)He stated that he had not mentioned all these facts, when his statement was recorded by PW-15, the Investigating Officer.

(e)He further stated that he had not stated from which direction they were going and from which direction they were coming, when the occurrence had happened.

34.It is thus seen that the witness is highly unreliable. He had been consuming alcohol from 07.00 pm till 08.45 pm and then claimed to be a witness of an occurrence which took place quite immediately thereafter at 09.15 pm. Therefore, he must also have been under the influence of alcohol at the time when the occurrence happened.



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35.We hold that the evidence of PW-2 does not inspire confidence.

36.In **(2024) 2 SCC 176 (Sekaran Vs The State of Tamil Nadu)**, the

Hon'ble Supreme Court had held as follows:

*“14.We start with the FIR, to which exception has been taken by the appellant urging that there has been no satisfactory explanation for its belated registration. It is trite that merely because there is some delay in lodging an FIR, the same by itself and without anything more ought not to weigh in the mind of the courts in all cases as fatal for the prosecution. A realistic and pragmatic approach has to be adopted, keeping in mind the peculiarities of each particular case, to assess whether the unexplained delay in lodging the FIR is an afterthought to give a coloured version of the incident, which is sufficient to corrode the credibility of the prosecution version.”*

37.The most disturbing fact is that PW-1, the father of the deceased had stated that the occurrence had taken place at 09.15 pm on 11.05.2015. The deceased was declared dead even before he could be taken to hospital. The complaint was lodged only at 05.00 am on 12.05.2015. Even if it is taken that the deceased was declared dead at 10.00 pm, the complaint was lodged nearly about seven hours after the incident. No explanation had been given for this delay, which is very vital.



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38.Ex-D1, is a copy of FIR in Cr.No.224 of 2015 in which, PW-1 had been cited as an accused. It had been registered on the basis of a complaint lodged by Muthu Lakshmi. She had stated that her house was practically ransacked by PW-1 and others mentioned in the complaint.

39.These facts have been completely suppressed from the purview of the Court. We hold that the prosecution witnesses have not come forward to state the correct sequence of events. PW-2 was unfortunately under the influence of alcohol. There had been a delay in lodging the complaint. All these factors would go to show that the prosecution had miserably failed to establish the case beyond reasonable doubt.

40.As stated by the Hon'ble Supreme Court, unless it is found that that the conclusion of trial Court is palpably wrong and based on erroneous view of law and that the approach was patently illegal and that the judgment was unreasonable and material evidence had been ignored, it would not be appropriate for this Court to over rule or disturb the judgment of acquittal rendered by the trial Court. The Court will have to presume innocence and



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further will also have to take into consideration the fact that the trial Court had actually rendered a judgment of acquittal.

41.In ***(2016) 10 SCC 519 (Jose @ Pappachan vs the Sub Inspector of Police)***, the Hon'ble Supreme Court had held as follows:

*“56.It is a trite proposition of law, that suspicion however grave, it cannot take the place of proof and that the prosecution in order to succeed on a criminal charge cannot afford to lodge its case in the realm of “may be true” but has to essentially elevate it to the grade of “must be true”. In a criminal prosecution, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof and in a situation where a reasonable doubt is entertained in the backdrop of the evidence available, to prevent miscarriage of justice, benefit of doubt is to be extended to the accused. Such a doubt essentially has to be reasonable and not imaginary, fanciful, intangible or non-existent but as entertainable by an impartial, prudent and analytical mind, judged on the touchstone of reason and common sense. It is also a primary postulation in criminal jurisprudence that if two views are possible on the evidence available, one pointing to the guilt of the accused and the other to his innocence, the one favourable to the accused ought to be adopted.”*

42.In view of all the above reasons, we are of the firm view that no credible grounds have been raised by the appellant/PW-1/de-facto complainant to convince us to overrule the judgment of the trial Court.



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43.In view of the above reasons, we hold that the appeal will necessarily have to fail and accordingly, we dismiss the Criminal Appeal.

**[C.V.K., J]      &      [J.S.N.P., J]  
.10.2024**

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

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To

1.The Additional District and Sessions Judge, Palani.

2.The Inspector of Police,  
Kodaikanal Police Station,  
Dindigul District.

3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.

4.The Section Officer,  
ER/VR Section,  
Madurai Bench of Madras High Court, Madurai.



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**C.V.KARTHIKEYAN, J.**

**AND**

**J.SATHYA NARAYANA PRASAD. J.**

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Judgment made in  
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**01.10.2024**