



Crl.A(MD)No.366 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 12.03.2024

Delivered on : .03.2024

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

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State represented by
The Inspector of Police,
High Court, Madras,
(Thenkarai P.S.
Crime No.208/18)

... Appellant/Complainant

Vs.

Vignesh Prabhu

... Respondent/Sole Accused

Prayer: This Criminal Appeal is filed under Section 378(1) of Cr.P.C., against the judgment dated 25.09.2019 passed in S.C.No.101 of 2018 on the file of the learned Additional District and Sessions Court, Theni at Periyakulam.

For Appellant : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor
For Respondent : Mr.S.Deenadhayalan



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JUDGMENT

DR G. JAYACHANDRAN,J.
AND
C.KUMARAPPAN,J.

The State has preferred the instant criminal appeal against the acquittal order, dated 25.09.2019, passed in S.C.No.101 of 2018 by the learned Additional District & Sessions Judge, Theni at Periyakulam.

2.Heard the learned Additional Public Prosecutor appearing for the appellant and the learned counsel appearing for the respondent.

3.According to the prosecution, the accused is a Police Constable and was the member of the escort team of the retired Judge. In furtherance of his escort duty, he and the other members of the escort team were provided with two SLR Gun, and one Pistol. While so, on 05.06.2018, after the escort duty was over, the accused took the weapon to his residence instead of depositing the same in the Armoury. It is the further case of the prosecution that on 05.06.2018 at about 01.30 p.m., he had a wordy quarrel with his father in connection with his marital discord. In furtherance thereto, at about 03.30 p.m.,



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he fired his father on the chest. As a result of which, the accused's father Selvaraj died instantaneously. Hence, the accused was charged for the offence under Section 302 IPC and under Section 27(3) of the Arms Act.

4.In order to prove the charges, the prosecution has examined as many as 23 witnesses and marked 13 documents. The prosecution has also marked 13 material objects. However, the trial Court, having considered all these evidences, has ultimately found that the prosecution has not proved the charge beyond all reasonable doubt and eventually, acquitted the accused.

5.Aggrieved with the said order, the State is before this Court by way of this appeal.

6.According to the learned Additional Public Prosecutor the trial Court has miserably failed to take into consideration of the statement of the hostile witnesses which are in support of the prosecution case, and has also failed to take into consideration of the circumstances which unerringly pinpoint the guilt of the accused without any other hypothesis. It is also further



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contended that, the State has proved the prosecution case through the expert evidence. However, the trial Court has not considered all those material evidences and took a wrong conclusion. Hence, he prays to interfere with the order of the trial Court.

7.Per contra, the learned counsel for the respondent would vehemently submit that the criminal prosecution is based upon the primordial presumption of the innocence of the accused. Whereas, in the case in hand, since the prosecution has failed to prove the charge, the order of acquittal has been passed by the trial Court. Therefore, the respondent/accused have now has double presumption of innocence. The learned counsel for the respondent would further submit that there is no patent illegality or error in the findings recorded by the trial Court. Thus, the learned counsel would submit that even if there is any other possible view other than the view recorded by the trial Court, still the high Court cannot take a different view. Hence, he prays to dismiss the instant appeal. In support of their contention, he has relied upon the judgment of the Hon'ble Supreme Court, in ***Ravi Sharma-Vs-State(Government of NCT of Delhi) and Anr.***, reported in ***2022 8 SCC 536 : 2022 0 Supreme(SC) 560***.



8.While harmoniously reading the evidence of the prosecution witnesses viz., P.W.1 to P.W.3 are the family members of the deceased qua P.W.1 and P.W.3 are the brothers of the accused and P.W.2 is the mother of the accused. According to the prosecution, all of them are the eye witnesses to the occurrence. It appears that the complaint was given by one of the brother of the accused (P.W.1). But when P.W.1 to P.W.3 were examined before the Court, they turned hostile and pleaded ignorance and they have not implicated the accused with the charge. To put it differently, except the official witnesses, all other witnesses turned hostile. Even the witnesses examined to prove the arrest and recovery, were also turned hostile.

9.However, it is the submission of the learned Additional Public Prosecutor that the evidence of Ballistic Expert(P.W.21) would be sufficient to lay the conviction against the accused. In this regard, the learned Additional Public Prosecutor would rely upon the positive results of the hand swab test. Therefore, he would submit that this expert evidence itself is suffice to hold that the accused has operated the pistol and fired against the deceased.



10. But, the learned counsel for the respondent/accused would contend that the mere expert evidence cannot be the sole basis to lay the conviction upon the accused without there being any substantive piece of evidence. In this regard, the learned counsel invites the attention of this Court about the evidence of P.W.5, who was examined by the prosecution, to prove the mahazar(Ex.P.3) which is the basis for taking hand swab from the accused. But unfortunately, P.W.5 turned hostile and his signature found in the mahazar alone has been marked as Ex.P.3. To put it differently, though there is a positive result for the hand swab test, there are no substantive evidence to establish collection of swab from the hands of the accused.

11. It is pertinent to mention here that this swab test are used to find out the substance of the gunshot residue in the hands of the accused. The gunshot residue is a complex mixture of burnt, unburnt, and partially burnt organic and inorganic materials, which had expelled as by products through the apertures of a firearm when a firearm is fired. Therefore, to connect the accused with the swab test, there must have been proof that such swab has been taken from the hands of the accused. Unfortunately, no evidence is available before



this Court to prove such factum. Though the prosecution has relied upon the alleged eye witnesses all of them, turned hostile. The expert evidence(P.W.21) has also not supported by substantive evidence. Therefore, this Court is of the firm view that the finding recorded by the trial Court is definitely a possible view.

12.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.

13.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



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“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.

14.In *Ravi Sharma case(cited supra)* the Hon'ble Supreme Court held that though the Ballistic Expert Report is obviously scientific evidence, such evidence is required to be used only along with other substance piece of evidence. Therefore, what emerges from the above discussion is that there is no other possible view other than the conclusion arrived at by the trial Court. Hence, this Court could not find any infirmity or perversity in the order of the trial Court.

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

(G.J.,J.) (C.K.,J.)
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NCC:Yes/No
Index:Yes/No
Internet:Yes/No



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- 1.The Additional District and Sessions Court, Theni at Periyakulam.
- 2.The Inspector of Police, High Court, Madras, Thenkarai P.S.
- 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.



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