



Crl.A.(MD)No.547 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
26.02.2024	08.03.2024

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

Crl.A.(MD)No.547 of 2019

S.Palanichamy

... Appellant / P.W.2

VS.

1.The State Rep. by
The Deputy Superintendent of Police,
Manapparai Sub Division,
Tiruchirappalli District.
(Crime No.342 / 2015)

... 1st Respondent / Complainant

2.Arun @ Arunpandian, S/o.Pandian

3.Karthick @ Hockey Karthick, S/o.Kasimayan

4.Balaji, S/o.Kannan

... Respondents 2 to 4 / A1 to A3

PRAYER : Criminal Appeal filed under Section 372 of Cr.P.C., to call for the entire records and set aside the judgment passed by the learned I Additional District and Sessions Judge (P.C.R.), Tirunelveli, in Spl.S.C.No.11 of 2015, dated

1/17



Crl.A.(MD)No.547 of 2019

27.04.2017, and consequently, convict the respondents 2 to 4 by imposing maximum punishment provided under the law.

For Appellant	: Mr.B.Janarth Kumar Legal Aid Counsel
For R1	: Mr.RMS.Sethuraman Additional Public Prosecutor
For R2	: No Appearance
For R3	: Mr.R.L.Dhilipan Pandian for Mr.K.Arunraj
For R4	: Mr.M.Karunanithi

JUDGMENT

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

This Criminal Appeal is preferred by the father of the deceased Muthukumar on being aggrieved by the judgment of the trial Court acquitting the accused.



Crl.A.(MD)No.547 of 2019

WEB COPY

2. Facts in nutshell:-

2.1. Based on the complaint given by one Duraimurugan (P.W.1), a case in Crime No.342 of 2015, dated 26.04.2015, was registered by the first respondent Police against the respondents 2 to 4, and 2 other juvenile in conflict with law. According to the F.I.R., a month ago, when he and his nephew Muthukumar, a resident of Bharathinagar, Manapparai, travelling in a two wheeler, the vehicle accidentally hit one Arun @ Arunpandian (A1) of Vadakupatti Village. Then, wordy quarrel erupted between them. Thereafter, there was subdued feud between them. On 26.04.2015, at about 07.00 p.m., when P.W.1, his brother Thangadurai (P.W.9) along with the deceased Muthukumar and others were preparing for the Mariamman Temple festival, Arun @ Arunpandian (A1) and Balaji (A3) came in a two wheeler rashly and stopped near Muthukumar. They reprimanded them and sent them away. After the Temple festival, while they were returning back to home, at about 10.00 p.m., near the house of Duraisamy Chettiar, Viralimalai Road, Manapparai A1 to A3 along with others armed with wooden log and knife attacked Muthukumar (deceased), Palaniappan (P.W.3), Harikrishnan (P.W.4) and Vignesh (P.W.5). The injured persons were taken to the



Crl.A.(MD)No.547 of 2019

Manapparai Government Hospital. The doctor examined Muthukumar and declared him brought dead. Other injured persons were given first aid.

2.2. The first respondent Police on completion of investigation, filed final report. The case was committed to Court of Sessions at Tiruchirappalli. Based on the material collected during the investigation, the following charges were framed by the trial Court:

Against A1 to A3: For rioting with weapon and murder of Muthukumar. Offences punishable under Section 148 of I.P.C.; Section 341 I.P.C.; and Section 302 read with Section 149 I.P.C. read with Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Against A3: For causing grievous hurt to Palaniappan (P.W.3) using weapon. Offence punishable under Section 326 of I.P.C.

2.3. To prove the charges, the prosecution has examined 26 witnesses. 30 documents and 11 material objects were marked. The copy of the petition in Crl.O.P.(MD)No.15848 of 2015 filed by the appellant before the High



Crl.A.(MD)No.547 of 2019

Court of Madras Madurai Bench was marked through the appellant (P.W.2) as defence document.

2.4. Before the trial Court, the first informant P.W.1, who supposed to be an eyewitness to the occurrence, failed to identify the assailants. He had denied knowledge about the earlier incident of quarrel between the deceased and the first accused, which is found in the complaint Ex.P1. He had deposed that the assailants came in a bike and attacked him and others. There is no evidence to prove that he sustained injury in the incident.

2.5. P.W.2, who is the present appellant, is a hearsay witness. According to him, he came to know about the incident through P.W.1. He has no direct personal knowledge about the earlier incident or the incident, which ended in homicide of his son. His entire testimony does not reveal any evidence worth admissible. The other injured witnesses, who were taken to the Government Hospital, Manapparai are Palaniappan (P.W.3), Harikrishnan (P.W.4) and Vignesh (P.W.5). None of these witnesses had incriminated the accused persons. They had deposed that while returning back to home after attending the Temple festival,



Crl.A.(MD)No.547 of 2019

they were attacked by a gang with wooden log. The Accident Register entered by the casualty doctor at Government Hospital, Manapparai for Vignesh, Harikrishnan and Muthukumar are marked as Ex.P8, Ex.P.9 and Ex.P.10 respectively. Palaniappan (P.W.3) left the hospital and got admitted in Sinduja Hospital. The Accident Register and wound certificate given to Palaniyappan at Sinduja Hospital are marked as Ex.P12 and Ex.P13. In these documents, which are contemporaneous, the injured have not stated that they were assaulted by known persons using wooden logs.

2.6. The Accident Registers indicate that the injured were taken to Hospital by Arunkumar (P.W.8) and Saravanan (P.W.10). Both P.W.8 and P.W.10 also turned hostile like, P.W.3 and P.W.4. The only witness, who had identified the accused persons as the assailants is P.W.9. However, the trial Court has declined to accept his evidence as reliable due to the self contradictions. Further, the nature of injury noted in the postmortem certificate (Ex.P14) indicates that it was a single deep cut injury on the right side scalp in 'V' shape. The opinion of the doctor in the final report says, the death might have occurred due to "head injury intracranial bleed and shock". Dr.Shanthi (P.W.16), during the cross examination,



Crl.A.(MD)No.547 of 2019

when shown the wooden logs M.O.1 and M.O.2, had categorically deposed that cut injuries will not be caused if hit by blunt weapon. The cut injuries found on the scalp of the deceased could not have been caused by using these wooden logs.

2.7. The trial Court after considering the inconsistencies and contradictions in the prosecution case, acquitted the accused from all the charges.

3. Contention of the appellant:-

The father of the deceased who earlier moved the High Court suspecting the investigation and also the witnesses for prosecution had preferred the appeal through Legal Services Authority. In the grounds of appeal, it is contended that the trial Court ought to have accepted the recovery of wooden logs stained with blood, since the recovery based on the confession of the accused persons. Also, relying on the evidence of P.W.9, the learned counsel for the appellant submitted that the trial Court ought not to have disbelieved the evidence of P.W.9, who had identified the assailants, even though the other injured witnesses failed to identify the assailants.



Crl.A.(MD)No.547 of 2019

WEB COPY

4. Heard the learned counsel for the appellant, the learned counsels for the respondents 3 and 4/accused and the learned Additional Public Prosecutor for the State. The records perused. The oral evidence and documentary evidence scrutinised in the light of the submission made by the learned counsels.

5. As per the prosecution witnesses, the incident had taken place on 26.04.2015 at about 10.00 p.m. in the dark of night while the Villagers were returning after attending the Temple festival. The assailants armed with weapons belongs to one Village, and the injured belongs to another Village. Two major contradictions found in the prosecution case has forced the trial Court to acquit the accused persons. Firstly, though it is a case of one death and three injured, the injured witnesses did not identify the assailants in the Court. Neither there was any attempt by the Investigating Agency to conduct the identification parade in the course of investigation. It is found from the documents that an armed gang of more than 10 persons attacked them. None were identified by the victims in the Court. Particularly, P.W.3 and P.W.4 in their chief-examination itself, had categorically deposed that at the time of incident, they did not see the accused persons at the scene of occurrence. Though P.W.5 the other injured witness says



Crl.A.(MD)No.547 of 2019

the accused were seen along with the assailants, he also, has not attributed any overt act against them.

6. Secondly, the injury found in the body of the deceased does not tally with the prosecution evidence. The weapon alleged to have used to cause the cut injury on the scalp is highly improbable as per the expert opinion. The weapons alleged to have used by the assailants are blunt weapons *i.e.*, wooden logs. Whereas, the injury, which was the cause for the death is the 'V' shaped sharp cut injury on the scalp. As per the opinion of P.W.16, a blunt weapon like the wooden log shown to her could not have caused the 'V' shape cut injury, which found in the body of the deceased.

7. Being an appeal against acquittal, the appellate Court bound to see whether the views expressed by the trial Court are reasonably possible. If the views expressed are reasonably possible, even if another view is possible, the appellate Court need not interfere. It is well settled principle of law that an order of acquittal should not be disturbed, unless it is perverse or bereft of reasoning. Even, if an alternate view is probable/possible, the view of the trial Court, which



CrI.A.(MD)No.547 of 2019

has acquitted cannot be substituted with the alternate possible view to reverse the order of acquittal and convict.

8. The Hon'ble Supreme Court recently in **Mallappa and Others vs. State of Karnataka (2024 SCC Online 130)**, had summarised the principles to be followed while deciding an appeal against acquittal as under:-

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

(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive - inclusive of all evidence, oral or documentary;

(ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;

(iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(iv) If the view of the Trial Court is a legally plausible



Crl.A.(MD)No.547 of 2019

WEB COPY

view, mere possibility of a contrary view shall not justify the reversal of acquittal;

(v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;

(vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court."

9. The learned counsel for the appellant contended that men may lie, but circumstance will not lie. The previous enmity and the presence of the accused at the time of occurrence and their respective overt act spoken by P.W.9, ought not to have been ignored by the trial Court.

10. In this aspect, it is apposite to refer paragraph 153 of **Sharad Birdhichand Sarda vs. State of Maharashtra (1984 (4) SCC 116)**, which has laid five principles to appreciate circumstantial evidence. They are :-

"(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.



Crl.A.(MD)No.547 of 2019

WEB COPY

*It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in **Shivaji Sahabrao Bobade vs. State of Maharashtra** [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033] where the observations were made:*

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence



Crl.A.(MD)No.547 of 2019

WEB COPY

of the accused and must show that in all human probability the act must have been done by the accused."

11. The reading of P.W.9's evidence, no one will be inspired to rely upon it. This witness claims that he was at the time of occurrence. According to his testimony, after the Temple festival, he along with his brother Duraimurugan (P.W.1), Arunkumar (P.W.8) and Saravanan (P.W.10) were walking ahead. Muthukumar (deceased), Harikrishnan (P.W.4) and Vignesh (P.W.5) were coming behind them at about 150 metres distance. On hearing noise and commotion, he and others turned back and saw A1 hitting Muthukumar with wooden logs. Muthukumar fell down crying. Karthick @ Hockey Karthick (A2) hit Muthukumar and Harikrishnan with wooden logs. When Palaniappan tried to defend Muthukumar, Balaji (A3) hit Palaniappan with wooden log. They rushed to the spot.

12. P.W.1 Duraimurugan does not say that his brother P.W.9 came with him. He had deposed the accused came in a bike and attacked him and others. He could not identify who attacked, and who caused which injury. P.W.8 Arunkumar



Crl.A.(MD)No.547 of 2019

WEB COPY
says, he along with P.W.9 and P.W.10 walking behind others namely, Muthukumar (deceased), Vignesh (P.W.5), Palaniappan (P.W.3) and Harikrishnan (P.W.4). On seeing they are attacked by a gang, they rushed to the spot and saw Muthukumar lying with injury. It was dark and the assailants could not be seen, since they all fled. P.W.10 says, he was walking along with Thangadurai (P.W.9), Arun (P.W.8), Harikrishnan (P.W.4) and Vignesh (P.W.5). The deceased Muthukumar with 4 or 5 others coming behind them about 10 to 20 feet. On hearing the cry that they have attacked, he along with others turned back and rushed. All the assailants run away. He saw Muthukumar with injuries. None of the assailants are present in the Court.

13. The case of the prosecution is loaded with inherent contradictions and improbabilities. P.W.9 evidence not only lack corroboration, but also contradicted by the other prosecution witnesses, who are supposed to be with P.W.1 at the time of occurrence.

14. In the instant case, the circumstances are far from conclusive and a conclusion of guilt could not be drawn from them. To sustain a conviction, the



Crl.A.(MD)No.547 of 2019

Court must form the view that the accused 'must have' committed the offence, and no 'may have'. As far as the facts under consideration, the only possible view is the view of the trial Court. When vital contradictions regarding identification of the assailants and the weapon used to commit offence stares at the face of prosecution, no conviction on surmises without proof is permissible.

15. As a result, for the above facts and circumstances, this Criminal Appeal is dismissed.

Index : Yes

NCC : Yes / No

smn2

[G.J., J.] & [C.K., J.]

08 .03.2024

To

1.The I Additional District and Sessions Judge (P.C.R.),
Tirunelveli.

2. The Deputy Superintendent of Police,
Manapparai Sub Division,
Tiruchirappalli District.

3.The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.

15/17



Crl.A.(MD)No.547 of 2019

WEB COPY

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



WEB COPY



CrI.A.(MD)No.547 of 2019

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

smn2

PRE-DELIVERY JUDGMENT MADE IN
CrI.A.(MD)No.547 of 2019

08.03.2024