



Crl.A.(MD)No.608 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
28.02.2024	08.03.2024

CORAM:

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

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G.Vijaya

... Appellant / P.W.1 (Victim)

VS.

1.State Rep. by
Inspector of Police,
Kaliyakkavilai Police Station,
Kanyakumari District.
(Crime No.2 / 2012 Palugal P.S.)

... 1st Respondent /
Complainant

2.Samraj, S/o.Johnson

3.Jeyan, S/o.Johnson

4.Reji, S/o.Aloshias

5.Aji, S/o.Aloshias

6.Mahesh, S/o.Selvaraj

7.Sounderarajan, S/o.Thaveedu

... Respondents 2 to 7 / A1 to A6



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PRAYER : Criminal Appeal filed under Section 372 of Cr.P.C., to call for the records in S.C.No.45 of 2012, on the file of the Additional District and Sessions Court, Kanyakumari District at Nagercoil, and set aside the judgment dated 23.07.2019 and punish the respondents 2 to 7 / A1 to A6 in accordance with law.

For Appellant : Mr.R.Ilayaraja

For R1 : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

For R2 to R7 : Mr.C.Muthu Saravanan

JUDGMENT

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

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

2. Facts in nutshell:-

2.1. Jose (P.W.7) constructed a house availing loan from Unni @ Viswam (P.W.17). Jose was not able to repay the loan. So, he sold the house to Unni @ Viswam (P.W.17). Later, the deceased Benedict, the paternal uncle of

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Jose tried to get back the property from Unni @ Viswam for his brother's son Jose. However, Samraj (A1) purchased that house from Unni @ Viswam. Hence, there was misunderstanding between the deceased Benedict and A1. On 01.01.2012 at about 11.00 p.m., a gang of six members armed with iron rods and wooden logs led by Samraj (A1) knocked the house doors of the Benedict, who was asleep inside his house. Vijaya, wife of Benedict along with her husband opened the doors of the house and came out. They saw the accused persons A1 to A4 armed with iron rod. A5 and A6 armed with wooden log. They abused Benedict in filthy language and questioned Benedict how he can support his brother's son Jose. They attacked Benedict all over the body with iron rods and wooden logs. Mahesh (A5) with his legs stamped the stomach of Benedict. When Benedict brother's son Viju [P.W.2] rushed to save Benedict, Jeyan (A2) stopped Viju and attacked him with knife. The injured Benedict and Viju were taken to Issac Hospital at Kaliyakkavilai. The doctor, who examined Benedict, declared him brought dead.

2.2. The criminal law was set into motion based upon the complaint received from Vijaya the wife of the deceased Benedict. Case in Crime



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No. 2 of 2012 for offences under Sections 147, 148, 294(b), 341, 323, 307 and 302 I.P.C. was registered against the six named persons. On completion of investigation, final report was filed and on committal to the Court of Sessions in S.C.No.45 of 2012, charges were framed against the accused as under:-

A1 & A3 to A6: Offences under Sections 120 (b), 148, 294(b), 302 and 307 read with Section 149 I.P.C.

A2 : Offences under Sections 120(b), 148, 294(b), 302 and 307 I.P.C.

2.3. The learned Additional District and Sessions Judge, Kanyakumari District at Nagercoil, after considering the case of the prosecution projected through 19 witnesses, 19 exhibits and 2 material objects, held that the accused are not guilty of charges tried.

2.4. The trial Court has listed the below reasons for disbelieving the prosecution case:-

(1) The occurrence has taken place on 01.01.2012 at 11.00 p.m. Complaint was given by the Wife (P.W.1) on 02.01.2012 at 04.00 am. However, P.W.1 had deposed that she went to the Police Station on the next day of the



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occurrence *i.e.*, on 02.01.2012 only at 07.00 a.m. The contradiction in time throws suspicion.

(2) P.W.1 claims that she was present when her husband was brutally attacked by the accused. She had not attempted to save her husband. Had she attempted to save her husband, she might also got some beats. This throws suspicion that P.W.1 might not have been at scene when the occurrence alleged to have happened. No blood stains collected from the scene of crime. The blood stained dress of the deceased not recovered. All put together, there is reason to believe that the prosecution has burked the real place of occurrence and shifted it to the house of the deceased.

(3) No independent witness was examined. P.W.1 to P.W.4 are the relatives of the deceased and they are interested witnesses. The residents of the neighbouring house are natural witnesses. Neither they were examined nor their houses shown in the Rough Sketch.

(4) The arrest, confession and recovery doubted by the trial Court, since the evidence of the Investigating Officer (P.W.19) not consistent with the evidence of other witnesses. P.W.10 the witness for arrest, confession and recovery, not aware who wrote the confession of the accused persons. He did not



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know from where the accused came. P.W.1 in the cross examination had deposed that she went to the Police Station at 07.00 a.m. on 02.01.2012 to give the complaint. She saw all the accused persons in the Police Station. Her statement falsifies the case of the prosecution regarding arrest, confession and recovery. As per the prosecution documents, the arrest was on 02.01.2012 at 12.15 p.m. near Parakundru Junction. Following arrest, the confession statements were recorded and thereafter, recovery effected.

(5) The external injuries noted by the postmortem doctor P.W.16 are not fatal injuries. Contusion and abrasions cannot be sufficient to cause death or likely to cause death. Further, the weapon alleged to have used by the accused persons, 6 in numbers, does not tally with the wound found on the body of the deceased.

(6) The prosecution's attempt to prove motive for the crime failed, since the evidence of Jose (P.W.7) and Unni @ Viswam (P.W.17) does not substantiate the motive theory as projected by the prosecution.

3. Being aggrieved, P.W.1 the wife of the deceased Benedict, has preferred the Criminal Appeal.



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4. The learned counsel for the appellant submitted that the finding and reasoning assigned by the trial Court is totally perverse and improper. Minor contradictions, which are natural, were given undue weightage by the trial Court to disbelieve the prosecution case. The evidence of P.W.1 to P.W.4 discarded by the trial Court based on surmises and conjectures. The trial Court misread the evidence of P.W.1, who had deposed that she was taken to the Police Station on 02.01.2012 at 07.00 a.m., wherein she saw the accused persons. While the injured witness P.W.2 had spoken about the incident and the overt act of the accused persons, the absence of injury to the other eyewitness P.W.1 been a reason stated by the trial Court for doubting the case of the prosecution. The said reasoning is factually and logically incorrect. When nothing worth to disbelieve the evidence of P.W.1 to P.W.4, the trial Court has doubted their evidence simply for the reason that they are interested witnesses. The trial Court erred in doubting the evidence of P.W.2, who sustained injury during the incident. Without any material evidence to suggest P.W.2 had implicated the accused persons falsely instead of the real assailants, the testimony of the injured witness is highly reliable. The trial Court failed to assess the evidence carefully and independently. Though the testimony of the eyewitnesses coupled with medical evidence found



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credible and trustworthy, the trial Court by partial and selective appreciation of evidence, had acquitted the accused persons, which has resulted in miscarriage of justice.

4.1. To buttress his submissions, the learned counsel for the appellant relied upon the judgment of the Hon'ble Supreme Court in **Abdul Sayeed vs. State of Madhya Pradesh** reported in **2010 (10) SCC 259**, wherein the Hon'ble Supreme Court has summarized the law on the testimony of injured witness as under:-

"30. ... the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence."

5. Per contra, the learned counsel for the respondents 2 to 7 submitted that, apart from P.W.1 to P.W.4, who are related to the deceased, the prosecution has failed to examine independent witnesses, who are the nearby residents of the deceased. According to the prosecution, pursuant to the conspiracy hatched among the accused persons A1 to A6, they all gathered together, armed with



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weapons and went to the house of the deceased on 01.01.2012 at about 11.00 p.m.

They called Benedict out and when he came out from the house, they attacked him with the weapons. According to P.W.1, who claims to have witnessed the occurrence, she and her husband came out from the house on hearing the shout of the armed gang, consisting of 6 members. They attacked her husband. When P.W.2 came to rescue her husband, P.W.2 was also attacked. Whereas, in Ex.P.11, the Wound Certificate issued for P.W.2, it is stated that three known persons with knife and wooden log attacked P.W.2 inside his house. It is the admitted case of the prosecution that the deceased and P.W.2 are not residing in the same house. Therefore, P.W.2, who is not residing in the house of the deceased, cannot be considered as an injured witness in the same transaction in which, the deceased sustained injury. The place where P.W.2 alleged to have sustained the injuries noticed by P.W.15 and recorded in the Wound Certificate (Ex.P.11) and the number of assailants is entirely different from the scene of crime in which, the deceased sustained injury and the number of assailants as spoken by P.W.1 and reflected in her complaint (Ex.P1).



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5.1. The learned counsel further submitted that Jose [P.W.7] and Unni @ Viswam [P.W.17] were examined by the prosecution to prove the previous enmity and motive for committing the crime. The evidence of P.W.7 not in corroboration with the evidence of P.W.1 as found in the complaint. He has deposed entirely different story regarding his transaction with P.W.17. He had deposed that before the occurrence, the accused 1 and 2 attacked him with iron rod and threw chilli powder on his face. However, neither he had given any complaint to the Police in this regard nor disclosed the same in his previous statement recorded under Section 161(3) Cr.P.C. Unni @ Viswam (P.W.17) had not said anything about the loan advanced to Jose (P.W.7) in order to mortgage of the property as contended by P.W.7. The testimony of P.W.17 stands unchallenged, since no cross-examination by the accused persons. According to P.W.17, for meeting out the expenses of his daughter's marriage, Margosh, who is the father of Jose [P.W.7], sold the property measuring an extent of 11 ½ cents to him in the year 2007, in which, P.W.7 signed as a witness. Out of 11 ½ cents of land, 9 cents of land was sold by Unni @ Viswam [P.W.17] to the first accused Samraj in the year 2009 and the balance 2 ½ cents of land was repurchased by Margosh. Between Jose and himself, there was loan transaction in respect of

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purchase of a vehicle. The sale deed in respect of 11 ½ cents of land executed by Margosh and his wife in favour of Unni @ Viswam [P.W.17] was marked as Ex.P.14 and the sale deed in respect of 9 cents of land executed by Unni @ Viswam [P.W.17] in favour of the first accused was marked as Ex.P.15 and the sale deed executed in respect of 2 ½ cents of land executed by Unni @ Viswam [P.W.17] in favour of Margosh was marked as Ex.P.16. Referring these testimonies of P.W.7 and P.W.17, the learned counsel appearing for the respondents 2 to 7 submitted that the trial Court has held that the motive projected by the prosecution not been proved and it is an invented story by P.W.1 to fix the respondents.

5.2. The learned counsel for the respondents submitted that the ocular evidence of P.W.1 to P.W.4 been contradictory to each other and the medical evidence in respect of injury sustained by P.W.2 does not tally with the weapon and the scene of crime. The trial Court has rightly disbelieved the case of the prosecution. The trial Court on collective appreciation of both oral and documentary evidence, had arrived at the conclusion that the case of the prosecution as narrated by its witnesses could not be possible.



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5.3. Relying upon the observation made by the Hon'ble Supreme Court at Paragraph 37, which runs as below, in **Mallappa and others vs. State of Karnataka** reported in **2024 SCC OnLine SC 130**, the learned counsel for the respondents 2 to 7 prayed that the appeal is liable to be dismissed.

"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 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



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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."

6. Heard the learned counsels on either side and perused the records.

7. All the six accused stood tried in connection with the homicidal death of one Benedict. The incident alleged to have happened on 01.01.2012 at about 11.00 p.m. The criminal law was set into motion on receipt of written complaint from one Vijaya, W/o.Benedict. The written complaint is marked as Ex.P1. Albin [P.W.6] is the person, who has signed in the written complaint as a witness. As per Ex.P1, Vijaya, wife of the deceased, had gone to the Police Station and given the complaint, which has been registered in Crime No.2 of 2012 on 02.01.2012 at 04.00 a.m. She had deposed that for conversing in favour of Jose [P.W.7] in respect of the property, there was enmity between the first accused and her husband [the deceased]. As a consequence, on 01.01.2012 at 11.00 p.m., A1 to A6 came to her house armed with weapon and attacked her husband. When P.W.2



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tried to rescue the husband of P.W.1, he was also attacked. The incident was seen by the neighbouring residents by name, Jegan, Babu and Rajan. On seeing them, the armed gang fled from the scene. The residents took her husband to the Isaac Hospital, Kaliyakavilai. Since the doctor informed that Benedict was brought dead, they took back the body to the house. On the next day, P.W.1 gone to the Police Station and gave the complaint [Ex.P1]. The Police came to her house, recovered the body and sent it to postmortem on 02.01.2012 at 08.00 a.m. She has identified four iron rods marked as M.O.1 series and the knife held by the fourth accused Jeyan as M.O.2. Though the F.I.R. was registered on 02.01.2012 at 04.00 a.m. based on the complaint given by P.W.1, in the cross-examination, P.W.1 had deposed that she was taken to the Police Station at 07.00 a.m. on 02.01.2012 and at that time, the accused were in the Police Station. Her time of visit to the Police Station is contrary to the time mentioned in Ex.P.1 and the time stated by stated by Albin [P.W.6], who has attested the complaint.

8. Rajan [P.W.5], one of the residents living nearby the scene of crime, in the cross-examination, had stated that the Police was informed immediately after the occurrence through one person by name, Devaraj. The Police came to the



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scene of occurrence within one hour. Thiagarajan [P.W.9], who is a witness to the Observation Mahazar [Ex.P2] prepared on 02.01.2012 at 06.30 a.m., had deposed that he signed the Observation Mahazar, which was already prepared by the Inspector of Police, and it was not prepared in his presence. He had categorically deposed that in the scene of occurrence, there was no blood stains. The Observation Mahazar [Ex.P2] describes the scene of crime as the backside of the first accused house and front side of the deceased Asbestos house. Viju [P.W.2], who according to prosecution, is one of the witnesses and sustained injury when he tried to intervene the attack on the deceased, had gone to the Government Hospital, Kuzhithurai, for treatment to the injury he sustained on 01.01.2012 at 11.30 p.m. The Wound Certificate of P.W.2, which is marked as Ex.P11, states that he was attacked by three known persons with Machete [Vettukathi] and wooden log inside his house. The contradictions regarding the time and place spoken by the witnesses, who claim to be eyewitnesses, is one of the reasons, the trial Court disbelieved the case of the prosecution.

9. As per the case of the prosecution, after the attack, Benedict was taken to the Isaac Hospital, Kaliyakkavilai, but the doctor examined him and has declared



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him brought dead. Therefore, they have brought back the body of Benedict to the home again. While the confession statements of the accused persons marked as Exs.P2 to P6, leading to recovery of the weapons, indicate that all were arrested on 02.01.2012 at about 12.15 p.m. Whereas, P.W.1 had deposed that when she went to the Police Station on 02.01.2012 at 07.00 a.m., all the accused were present in the Police Station. This is yet another reason to disbelieve the case of the prosecution and more particularly, the testimony of P.W.1 has been considered as interested witness and unreliable one. In the said context, the failure of the prosecution to collect blood stains from the scene of occurrence has also gain significance to doubt whether the occurrence took place in front of the deceased house or elsewhere, because, the injured witness had informed the doctor that he sustained injury on 01.01.2012 at 11.30 p.m. when three known persons attacked him inside his house.

10. Considering the motive for attack, the prosecution has miserably failed to establish that there was any animosity between the accused persons and the deceased. P.W.1 admits in the cross-examination that there was no ill-will between her husband and the accused persons in connection with the property



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held by Jose [P.W.7] and sold to Unni @ Viswam [P.W.17]. In fact, she had admitted that there was some quarrel and about the criminal case between her and P.W.2 family. In this context, it is also relevant to look into the evidence of Jose [P.W.7], who deposed an entirely different story about his dispute with A1 regarding the property sold by his father to Unni @ Viswam [P.W.17]. He had accused, Unni @ Viswam [P.W.17] for getting the property under threat. Whereas, the said Unni @ Viswam, who was examined as P.W.17, deposed that the transaction of the loan was a different dealing between him and the father of P.W.7 - Jose. Apart from that, he had financial transaction with Jose [P.W.7] and he has lend money to Jose [P.W.7] for purchase of vehicle. The disjoint and unconnected incidents between Jose [P.W.7] and Unni @ Viswam [P.W.17] been shown as a motive for A1 to attack the deceased. However, there is no live link between the transactions narrated as a motive. It is to be noted that the contradictions in isolation though appear to be minor and trivial in nature, put together on cumulative assessment, the case of the prosecution fails to inspire the confidence of this Court through the witnesses examined.



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11. The scene of the crime itself has become doubtful in this case, since the earliest document being the Wound Certificate issued to Jose [P.W.2] states that he got injured at his house when three known persons attacked him on 01.01.2012 at 11.30 p.m. If P.W.1's evidence to be accepted that P.W.2 came to rescue her husband Benedict, when her husband was attacked by the accused persons in front of her house at 11.00 p.m., then, the evidence of P.W.2 has to be disbelieved.

12. No doubt, a testimony of injured witness stands on a higher pedestal than other witnesses. If the evidence of Viju [P.W.2] and the medical record [Ex.P.11] read together, they are contradictory in respect of the place and time and also the number of persons, who had attacked Viju [P.W.2]. When there was a serious doubt about the testimony of P.W.1 to P.W.4, who are relatives and interested witnesses, in the absence of independent corroborative evidence, the trial Court has acquitted the accused persons.

13. The view and reasoning recorded is a reasonably possible view. For a transaction, which has completed few years ago, they need not be any provocation to attack Benedict on 01.01.2012. More so, when it is admitted by



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Vijaya / de-facto complainant [P.W.1] herself that there was no animosity between the accused and the deceased in respect of the past transaction regarding the property once held by the parents of Jose [P.W.7]. As often stated by the Courts, with an order of acquittal by the trial Court, the normal presumption of innocence in a criminal matter gets reinforced [**Atley vs. State of U.P., (AIR 1955 SC 807)**]. If two views are possible from the evidence on record, the appellate Court must be extremely slow in interfering with the order of acquittal [**Sambasivan vs. State of Kerala ((1998) 5 SCC 412)**].

14. The various grounds on which, the trial Court has based its order of acquittal, cannot be overlooked by the appellate Court when appreciation of evidence by the trial Court did not suffer from any flaw. Therefore, the view of the trial Court, which is legally possible and no demonstrable illegality or perversity or error of law could be seen from the decision of the trial Court. The appeal against acquittal is bound to be dismissed. Accordingly, it is dismissed.

Index : Yes
NCC : Yes / No
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[G.J., J.] & [C.K., J.]
08.03.2024

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To

- 1.The Additional District and Sessions Judge,
Kanyakumari District at Nagercoil.
- 2.The Inspector of Police,
Kaliyakkavilai Police Station,
Kanyakumari District.
- 3.The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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

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PRE-DELIVERY JUDGMENT MADE IN
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08 .03.2024

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