



CrI.A.(MD)No.128 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 09.12.2024

Pronounced On : 23.01.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

CrI.A.(MD)No.128 of 2021

Muniyandi

... Appellant / Defacto Complainant

Vs.

1.State through

The Inspector of Police,
Devipattinam Police Station,
Ramanthapuram District.
(In Crime No.316 of 2012)

... Respondent / Complainant

2.Gowtham

... Respondent No.2 / Sole Accused

PRAYER: Criminal Appeal filed under Section 372 of the Criminal Procedure Code, to call for the entire records in S.C.No.57 of 2014, dated 04.08.2017 on the file of the Additional District and Sessions Court, Ramanathapuram and set aside the acquittal order against the second respondent / accused and convict accused person and enhanced the sentence.



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For Appellant : Mr.R.Alagumani

For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor for R1

: Mr.M.Suri for R2

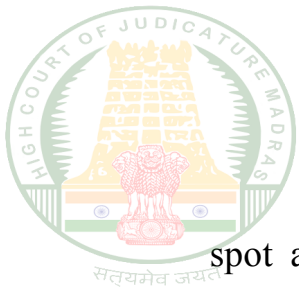
JUDGMENT

(Judgment of the court was delivered by G.R.Swaminathan, J.)

The defacto complainant in S.C.No.57 of 2014 on the file of the Additional District and Sessions Judge, Ramanathapuram has filed this appeal questioning the acquittal of the accused.

2. Muthukumar, son of the defacto complainant Muniyandi, was found murdered on 18.12.2012 in a grove belonging to one Chandran. Ex.P1-complaint was lodged before the Devipattinam Police Station at 18.00 hours. Crime No.316 of 2012 was registered for the offence under Section 302 of IPC. P.W.17 who was working as Inspector of Police took up investigation and went to the spot. He sent the body for postmortem to the Government Hospital, Ramanathapuram. He examined the witnesses namely Muniyandi, Vijaya, Saraswathi, Tharani, Muniyammal and Kavitha and recorded their statements. He went to the

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spot again at 6.15 am on the next day and prepared the observation mahazer and rough sketch. He also seized the blood stained earth samples. He arranged for inquest to be conducted. Since he came to know that the accused Gowtham was involved in the case, he sent report to the jurisdictional Magistrate for implicating him as the accused. He arrested the accused at 12.00 noon on 19.12.2012 near Gopi Iyermadam Check Post. He recorded the confession of the accused in the presence of the Devipattinam VAO Sekkilar and Village Assistant Natarajan. Based on his disclosure statement, he seized the weapon used for committing the crime. He also seized the vehicle used by the accused. After examining few other witnesses and obtaining the forensic opinion, he filed final report on 18.03.2013 before the Judicial Magistrate No.1, Ramanathapuram. It was taken on file in P.R.C.No.21 of 2014. It was committed to the Principal Sessions Court, Ramanathapuram and made over to the Additional District and Sessions Court, Ramanathapuram in S.C.No.57 of 2014. The prosecution examined P.W.1 to P.W.17 and Ex.P1 to Ex.P21 were marked. M.O.1 to M.O.8 were also marked. On the side of the accused, no evidence was adduced. The learned trial Judge, after considering the evidence on record, acquitted the accused.



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Challenging the same, this appeal has been filed. It is only the defacto complainant who has preferred this appeal. State did not file any appeal challenging the acquittal.

3. The learned counsel appearing for the appellant contended that it was the accused who invited the deceased to the occurrence spot and murdered him. The deceased was last seen together with the accused and this has been established through the testimony of P.W.2 & P.W.3.

4. The learned counsel for the appellant also submitted that the accused was in love with one Tharani. Since the deceased had married her, the accused had motive to do away with him. This has been brought out from the evidence of P.W.4, P.W.5 & P.W.6. Based on the disclosure statement of the accused, the weapon used for committing the crime had also been recovered. The learned counsel for the appellant also submitted that the accused failed to offer any convincing explanation during cross-examination under Section 313 of Cr.P.C. He submitted that the court below had approached the issue perversely and that the impugned Judgment has to be set aside.



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5. The learned Additional Public Prosecutor also supported the stand taken by the learned counsel for the appellant. The learned counsel for the accused / second respondent submitted that the impugned Judgment acquitting the accused is well reasoned and that it does not call for interference.

6. We carefully considered the rival contentions and went through the evidence on record. We are mindful of the fact that this is an appeal against acquittal. In the recent decision reported in **2024 SCC Online SC 523 (Bhupatbhai Bachubhai Chavda Vs. State of Gujarat)**, the Hon'ble Supreme Court had held that while the appellate Court has to re-appreciate the evidence, after reappreciating the evidence, the first question that needs to be answered by the appellate court is whether the view taken by the trial Court was a plausible view that could have been taken based on the evidence on record. The appellate court can interfere with the order of acquittal, only if it is satisfied after reappreciating the evidence that the only possible conclusion was that the guilt of the

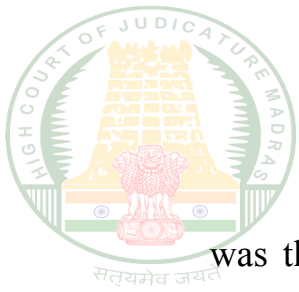


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accused had been established beyond a reasonable doubt. The appellate court cannot overturn the order of acquittal on the ground that another view is possible. In other words, the Judgment of acquittal must be found to be perverse. Unless the appellate court records such a finding, no interference can be made with the order of acquittal. The well settled principle is that an order of acquittal further strengthens the presumption of innocence of the accused.

7. In the case on hand, the prosecution originally projected before the court below that there were eye-witnesses. P.W.2-Vijaya and P.W.3-Saraswathi were said to have been the eye-witnesses. But both of them turned hostile. They stated that they saw the accused and the deceased talking to each other in the place of occurrence with liquor bottles in their hands. Thus, the entire case of the prosecution rests on the last seen theory.

8. The Hon'ble Supreme Court in ***Kanhaiyalal Vs. State of Rajasthan (2014) 4 SCC 715*** held that the circumstance of last seen together does not by itself and necessarily lead to the inference that it



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was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the accused by itself cannot lead to proof of guilt against the accused. In *State of Uttar Pradesh Vs. Satish (2005) 3 SCC 114*, it was held that the last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that the possibility of any person other than the accused being the author of the crime becomes impossible.

9. P.W.2 as well as P.W.3 are none other than the aunts of Tharani-wife of the deceased. P.W.2-Vijaya hails from Jamintharvalasai. P.W.3-Saraswathi hails from Ilanthaikuttam. Both are different villages altogether. Both the villages are 5 kilometers apart. The evidence was to the effect that both of them went in search of their cattle and both of them saw the deceased with the accused at 2.30 in the occurrence spot with liquor bottles in their hands. The court below had characterized their testimony as unbelievable. The court below had also assigned convincing reasons as to why their testimony cannot be believed. They

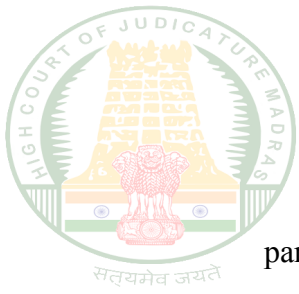


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had originally told the police that they had witnessed the accused stabbing the deceased. They however turned turtle in the court during trial.

10. P.W.1–defacto complainant had stated that he came to know about his son's murder from one Manikkam. P.W.2 claims that she came to know about the death of Muthukumar at about 3.30 pm on the said date. P.W.2 had stated that she saw the deceased and the accused chatting casually. According to P.W.2 & P.W.3, the accused and the deceased were having liquor bottles in their hands. But the investigating officer did not seize any liquor bottles from the spot. It is further seen that from the information lodged before the police station, FIR was registered only at 06.00 pm on the said date. Investigation was taken up at 06.15 pm. But P.W.2 had deposed that the police enquired her at 04.00 pm itself. The court below has remarked that investigation has commenced much prior to the lodging of the complaint. Paragraph Nos. 33 & 34 of the trial court Judgment reads as follows:-

“33. P.W.2 had admitted in cross examination that her village situate 5 km away from the village of P.W.3. In that case how come P.W.2 & 3 came together to see the accused and the deceased together in a

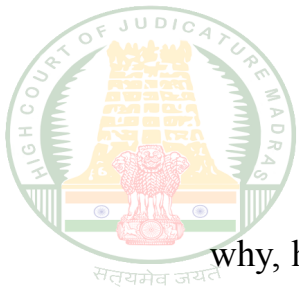


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particular village is not properly explained. The statement that P.W.2 & P.W.3 who were living into different villages came together in search of lost cows is not believable.

34.P.W.3 had also admitted that the police came to the occurrence at 4.00 pm on 18.12.2012 and the parents and relatives had assembled in the place of occurrence. P.W.3 had stated that she went in search of the cows along with P.W.2 at 1.30 pm and specifically denied the suggestion that she had never stated that she went in search of the cows at 2.30 pm. In this regard, also the evidence of P.W.2 & 2 contradicts each other's evidence. The timing plays a vital role in 'last seen together cases'. Therefore, the evidence of hostile eye witnesses namely P.W.2 & P.W.3 does not inspire confidence. If the evidence of P.W.2 & 3 before this Court is taken as it is it means that the witnesses had seen the accused and the deceased together in the place of occurrence at 1.30 pm or 2.30 pm. The deceased was reportedly dead at around 3.30 pm. Therefore, at least one to two hours of time gap between last seen together and the reported time of death which is a long gap during which whatever might have happened. So even if the evidence of P.W.2 & P.W.3 is taken on its face value we cannot come to a definite conclusion that the accused alone would have murdered the deceased.”

11.Looked at from any angle, we cannot hold that the view taken by the court below in favour of the accused cannot be said to be a plausible one. Even the aspect of motive has been discredited by the court below. The prosecution has made it appear that since the deceased married his lover, the accused entertained ill-will towards him and that is



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why, he murdered him. If that be so, the prosecution theory suffers from an inherent contradiction. The prosecution states that it was the accused who invited the deceased for a liquor party. If the motive attributed to the accused is true, the deceased would not have invited the accused to consume alcohol together. The court below after a careful consideration of the oral and documentary evidence came to the conclusion that the prosecution did not prove its case against the accused beyond reasonable doubt. The court below has therefore given the benefit of doubt to the accused.

12. We are of the view that the view taken by the court below cannot be said to be perverse by any standard. We decline to interfere. We uphold the Judgment of acquittal. The criminal appeal is dismissed. No costs.

(G.R.S. J.) & (R.P. J.)
23.01.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

- 1.The Additional District and Sessions Court, Ramanathapuram.
- 2.The Inspector of Police,
Devipattinam Police Station,
Ramanthapuram 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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