

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON: 18.09.2024

PRONOUNCED ON: 01.10.2024

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

Crl.A.No.166 of 2019

Ezhumalai ... Appellant/Defacto complainant

vs.

1.State Rep by
The Inspector of Police,
Mangalam Police Station,
Thiruvanamalai District
Crime No.282/2010 ... 1st Respondent/Complainant

2.Arumugam

3.Poongavanam ... 2nd & 3rd Respondents/Accused 1 & 2

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, 1973, to set aside the judgement in S.C.No.153 of 2011 delivered by the learned Principal District Sessions Judge, Thiruvannamalai District,



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order dated 15.12.2018.

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For Appellant : Mr.S.Suresh
For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor for R1
Mr.S.Silambu Selvan for R2

JUDGEMENT

C.KUMARAPPAN.J.,

The instant Criminal Appeal has been filed against the order of acquittal passed against the respondents 2 and 3, by the learned Principal District Sessions Judge, Thiruvannamalai District in S.C.No.153 of 2011.

2. The appellant herein is the defacto complainant. Shun of unnecessary details, the necessary facts which are relevant for the effective disposal of the instant Criminal Appeal are that, P.W.1 / *defacto* complainant, and the first accused are the sons of deceased, Karaikandan. The second accused is the wife of the first accused. According to the prosecution, there was a dispute between the brothers, namely P.W.1 on one



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side and the first accused on other side. While so, on 24.07.2010, P.W.1 demanded a sum of Rs.700/- being the accused share of common expenditure, from the second accused, in the absence of her husband / first accused. Enraged by the act of P.W.1, on 25.07.2010, at about 10.00 a.m., when the deceased and the P.W.1 were standing in front of their house, the first accused had rushed to the scene of occurrence along with his wife / second accused, with a wooden log, and both of them had abused and attacked P.W.1. When the deceased intervened and attempted to pacify both of them, the first accused assaulted the deceased on his forehead indiscriminately and the second accused attacked the deceased on his face. As a result, the deceased fainted and was immediately taken to Thiruvannamalai General Hospital, where he was referred to Puducherry General Hospital for further treatment. However, when the deceased reached the hospital, the doctors declared that the deceased died on the way.

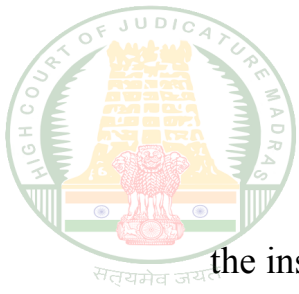
3. Thereafter, P.W.1 gave a police complaint against both the accused on 25.07.2010 at about 15.30 hrs, before the Sub Inspector of Police (P.W.11). Upon receipt of the complaint, an F.I.R was registered in Crime



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No.282 of 2010 under Sections 294(b), 323, 307 IPC. Subsequently, P.W.11 forwarded the same to the concerned Jurisdictional Magistrate, as well as to the Investigating Officer. The Investigating Officer (P.W.12), after receiving a copy of the F.I.R went to the scene of occurrence and prepared an observation mahazar and rough sketch in the presence of the witnesses. He had also recorded the confession statement of both the accused, and an alteration report was sent to the Court, for altering the charges from 307 IPC to 302 IPC. Thereafter, P.W.12 also recovered the weapon, and forwarded it to the Jurisdictional Magistrate. After recording the statements of the postmortem doctor and the other witnesses, he eventually laid the charge sheet against the accused.

4. Before the trial Court, the prosecution relied on as many as 13 witnesses and 21 documents to prove their case. The trial Court, after having considered the oral and documentary evidence, found that the prosecution had miserably failed to prove the charges, and as a result, the accused were acquitted and set at liberty. Assailing the said order, the P.W.1 / *defacto* complainant / son of the deceased and brother of the accused, has preferred



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the instant Criminal Appeal.

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5. Mr.S.Suresh, learned counsel for the *defacto* complainant / P.W.1 / appellant would vehemently submit that since P.W.1 is an injured witness and the occurrence was during daylight, his testimony has to be given due credence, particularly when no other materials were elucidated to discredit the trustworthiness of the evidence of P.W.1. It is further contended that the Trial Court, by exaggerated adherence to the rule of giving the benefit of the doubt, has disbelieved the P.W.1's evidence. Therefore, it is the contention of the learned counsel for the appellant that the findings of the learned Trial Judge are perverse and that there is no possibility to arrive at such a conclusion. Hence, he prayed to interfere with the order of the learned Trial Judge and to allow this appeal, thereby finding the accused guilty of charges under Sections 323 and 302 IPC.

6. In support of the submission of the appellant's counsel, the learned Additional Public Prosecutor, would reiterate the same contention, and relied upon the judgment of the Hon'ble Supreme Court in the case of ***Ravi vs. State Represented by Inspector of Police***, [(2008) 15 SCC 115].



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7. Per contra, Mr.S.Silambu Selvan, learned counsel for the respondents 2 and 3 / Accused, would vehemently contend that the findings rendered by the Trial Court are plausible, and could not be held to be perverse. It is his further contention that when a plausible view taken by the Trial Court, this Court in Appeal cannot take a different possible view by re-appreciating the evidence. It is further contended that the order of acquittal reinforces the innocence of the accused, therefore, he prayed for dismissal of the instant Criminal Appeal.

8. We have given our anxious consideration on the submissions made on either side.

9. It is a settled principle of law that there is no difference between an appeal against conviction, and an appeal against acquittal, and this Court has got full power to review and re-appreciate the evidence. However, there is a very thin, but a fine distinction between an appeal against conviction on one hand, and an appeal against acquittal on the other. While dealing with



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the appeal against acquittal, the presumption of innocence is fortified, and that the reasonable view of the trial Court should not be ordinarily be interfered with.

10. In this regard, it is relevant to refer to the judgment of the Hon'ble Supreme Court in the case of ***Mallappa and Others vs. State of Karnataka***, [(2024) 3 SCC 544] and the relevant paragraph is extracted as follows:

"42.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 summarised as:

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

(ii) Partial or selective appreciation of



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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 reappraisal 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."

11. In the light of the above settled principle of law, let us proceed



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with the facts of the case. While ruminating the findings rendered by the Trial Court, it is found that the inability of the P.W.1, to recollect at least a few of the persons, while 20 to 30 persons were witnessing the occurrence, would shadow the creditworthiness of the reliability of P.W.1. If we look at the evidence, there was a previous enmity between P.W.1 and his brother / first accused. Admittedly, except P.W.1, prosecution has no other eye witness to support their case.

12. At this juncture, the learned Additional Public Prosecutor placed reliance upon the judgment of the Hon'ble Supreme Court in *Ravi's* case (cited *supra*), wherein it was held that when the sole testimony is found to be cogent and credible, conviction can be based on the said solitary testimony. We absolutely do not have any grievance over the proposition, but the issue to be considered is whether the P.W.1 is a wholly reliable witness. No doubt, P.W.1 had also sustained an injury. However, it is the defense of the accused that it was P.W.1 who attacked the deceased and, only to cover up his guilt, he framed the appellant as the accused. Before we proceed, we must also keep in mind even according to prosecution, there is

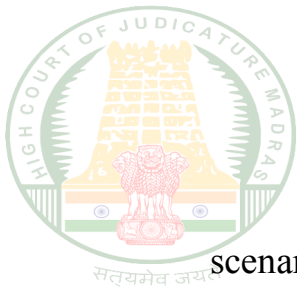


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no strong motive between the accused and the deceased. Further, P.W.1 had also admitted that, on the occurrence date, even the first accused was admitted in the hospital; therefore, it appears that the accused had also sustained injuries in the occurrence.

13. Admittedly, there was some occurrence on the fateful day, and the deceased intervened only to pacify his sons, *qua* P.W.1 and the first accused. But, in the *melee*, the deceased sustained fatal injuries. Therefore, the main and only requirement to be proved is who assaulted the deceased. In such a scenario, when there was enmity between P.W.1 and accused, and when according to P.W.1, there were admittedly 20 to 30 witnesses present at the scene of occurrence, and when the prosecution could not bring forth at least one independent witness to corroborate P.W.1, it is highly unsafe to rely only on the solitary evidence of doubtful witness P.W.1.

14. Therefore, when a witness becomes untrustworthy, it is prudent to expect corroboration from some other witnesses. However, in the case on hand, there is no corroboration to the doubtful testimony of P.W.1. In that



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scenario, the view expressed by the Trial Court is plausible, and this Court could not find any perversity over the finding of the acquittal.

15. Therefore, this Court is of the firm view that when a view taken by the Trial Court is a legally plausible, the mere possibility of a contrary view shall not justify the reversal of the acquittal. Moreover, the trial Court has the advantage of seeing the demeanor of the witnesses. In such circumstances, it is not permissible for the appellate Court to interfere with such plausible and possible view. Hence, we do not find any ground to interfere with the order of acquittal passed by the learned Trial Judge.

16. In the result, the Criminal Appeal stands dismissed.

[M.S.R., J] [C.K., J]
01.10.2024

Index : yes
Neutral citation : yes
Anu

To

1. The Inspector of Police,



Mangalam Police Station,
Thiruvanamalai District

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M.S.RAMESH, J.
and
C.KUMARAPPAN, J.

Anu

2. The Principal District Sessions Judge, Thiruvannamalai District

3. The Public Prosecutor,
High Court, Madras

Pre-delivery order in
Crl.A.No.166 of 2019

01.10.2024