

NOT-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1647-1648 OF 2008

STATE REP. BY INSPECTOR OF POLICE, T.N. ... APPELLANT

:Versus:

MANIKANDAN AND ORS.

... RESPONDENTS



O R D E R

1. These appeals are directed against the judgment and order dated 19th July, 2006 passed by the High Court of Judicature at Madras in Criminal Appeal Nos.389 & 575 of 2003 together with Criminal Revision Nos.201 and 1389 of 2002, whereby the High Court has dismissed both the appeals and both the revisions, confirming the judgment delivered by the Additional Sessions Judge, Nagapattinam in S.C. Nos.39 of 1998 and 148 of 1999.

2. As recorded in the impugned judgment of the High Court, there are six accused in S.C. No.39 of 1998 on the file of Additional Sessions Judge, Nagapattinam. They are: Murugesan (A-1), Senthil Kumar (A-2), Manikandan (A-3), Rajendran (A-4), Hari @ Harikrishnan (A-5) and Kathir @ Kathiravan (A-6). Since Manikandan (A-3) and Hari @ Harikrishnan (A-5) were absconding at the time of trial, their case was separated and they were subsequently secured and tried in S.C. No.148 of 1999. A separate trial was conducted in S.C. No.39 of 1998 as against A-1, A-2, A-4 and A-6. Both these cases ended in acquittal. Hence, the State preferred criminal appeals, being Criminal Appeal No.389 of 2003 against the judgment in S.C. No.148 of 1999 and Criminal Appeal No.575 of 2003 against S.C. No.39 of 1998. The wife of the deceased preferred two criminal revisions (Criminal R.C. Nos.201 and 1819 of 2002) against the aforesaid judgments of the Trial Court.

3. Before we proceed further, it is necessary for us to set out the facts very briefly. A-1's brother

Kaliyamurthy was murdered due to previous enmity by Paneerselvam and two others. So Senthil Kumar (A-2) and Manikandan (A-1) who are the sons of Kaliyamurthy, had grudge against the deceased Gopalakrishnan as he had preferred a complaint against them in respect of an incident which took place on 21.10.1992. It was alleged that due to the said motive when Gopalakrishnan along with his wife Vijaya, was proceeding on his bicycle, Murugesan (A-1), Senthil Kumar (A-2), Rajendran (A-4) and Manikandan (A-3) assaulted Gopal @ Gopalakrishnan with Aruval, causing instantaneous death.

4. According to the prosecution, accused Murugesan had assaulted the deceased Gopalakrishnan with Aruval on the right hand, accused Senthil Kumar had assaulted the deceased Gopalakrishnan with Aruval on the left ankle and right thigh, causing grievous injuries, accused Manikandan had assaulted the deceased Gopalakrishnan with Aruval on the right shoulder and accused Rajendran had assaulted the deceased Gopalakrishnan on the right ankle and right thigh. There is no overt act attributed

against accused Hari @ Harikrishnan and accused Kathir @ Kathiravan. It is the case of the prosecution that accused Hari @ Harikrishnan and accused Kathir @ Kathiravan were keeping vigil at the place of occurrence while the other accused were committing the crime. A complaint was lodged by wife of the deceased, being Ext.P10 (Ext.P1 in S.C. No.148/1999) before the Village Administrative Officer (PW-3) who in turn preferred a complaint before PW-13 (in S.C. No.148/1999). The Inspector, PW-14 (PW-18 in S.C. No.148/1999) took up the investigation, visited the place of occurrence, prepared observation Mahazar and rough sketch and recovered material objects, held inquest, examined the witnesses, recorded their statements and filed the charge-sheet. The learned Judicial Magistrate, Mayiladuthurai took up the case in P.R.C. 4 of 1997 and after furnishing copies under Section 207 Cr.P.C. committed the case to the Court of Sessions for trial under Section 209 Cr.P.C.

5. The Trial Court examined fourteen prosecution witnesses (PWs.1 to 14) and marked Exts. P1 to P21 and M.Os.1 to 13 in S.C. No.39 of 1998. As against accused Manikandan and Hari @ Harikrishnan, the case was split up as S.C. No.148 of 1999 wherein PWs.1 to 18 were examined and Exts. P.1 to 23 and M.Os.1 to 13 were marked. The Trial Court in both the matters held that the prosecution could not prove the charges leveled against the accused and accordingly acquitted all the accused. Hence, appeals were filed by the State before the High Court. The High Court after considering the facts of the case and after appreciating the evidence which was adduced before the Trial Court, came to the conclusion that the prosecution case suffers from defects and held that the learned Sessions Judges have come to definite conclusion that the prosecution has failed to prove the guilt of the accused beyond a reasonable doubt and affirmed the reasoning given by the Additional Sessions Judge and refused to interfere with the said decisions.

6. We have heard the learned counsel for the parties at length. We have also gone through the judgments delivered by the learned Sessions Judge as also by the High Court of Judicature at Madras. We find that the High Court has given its reasoning in respect of the evidence which was adduced before the Trial Court, in particular, the wife of the deceased Vijaya. It appears that the High Court has correctly analysed the evidence and found that there is glaring discrepancies found in the complaint preferred by Vijaya, being Ext.P-10. The High Court has noticed that the wife of the deceased, Vijaya had preferred the complaint soon after the occurrence on 24.9.1996 at about 12.00 Noon before the Village Administrative Officer. Vijaya was examined as PW-12 in S.C. No.39 of 1998. In the complaint, she had categorically stated that Senthil Kumar (A-2) and Manikandan (A-1) in S.C. No.148 of 1999 and Murugesan (A-1) and Rajendran (A-3) had assaulted her husband with Aruval. But when she deposed before the Court as PW-12, she implicated six persons Murugesan (A-1),

Senthil Kumar (A-2), Rajendran (A-3), Manikandan, Hari @ Harikrishnan and Kathir @ Kathiravan @ Kathiresan. The High Court correctly held that there is a glaring discrepancy in the complaint before the Court and in her evidence. As per Exhibit P-10, there are only four accused and while deposing before the Court she improved her version and stated that there were about six persons in the scene of occurrence.

7. It is no doubt that there is previous enmity which is also reflected from the evidence of PW-13 who claimed to be an eye witness. The husband of PW-13 Amrithalingam was murdered by one Kaliamurthy and his associates. It is also a fact that Kalaimurthy was also murdered. The said eye witness stated that the occurrence took place on 24.9.1999 at about 10.30 A.M. while she was waiting for the bus to go to a grocery shop to purchase groceries. She also stated that A-1, A-2 and A-3 had assaulted with Aruval at Gopalakrishnan. In the cross-examination, she identified A-1, A-2, A-3 and A-4 and according to her,

those four accused persons were holding Aruval in their hands at the time of occurrence. But in the chief, she deposed that Manikandan (A-1) in S.C. No.148 of 1999 had assaulted Gopalakrishnan. But according to PW-12, there were six persons present at the time of occurrence and out of them, four accused assaulted Gopalakrishnan with Aruval whereas PW-13 deposed in her cross-examination that only four persons were present at the time of occurrence. There were also discrepancies in the statements of PW-12 and PW-13 which also have been noted by the High Court. The High Court has also noticed that no weapon was recovered from the accused. There were also discrepancies in the statements of PW-12, PW-13 and PW-14 which were not explained by the prosecution.

8. We have further noticed that PW-12 Vijaya in her evidence had stated that after the occurrence, she went to the Village Administrative Officer at about 12.30 P.M. and narrated the facts which were reduced to writing and then read over to her and thereafter she

signed Ext.P-10. But we have noticed that PW-13 the Village Administrative Officer after he came to learn about the said incident, went at the place of occurrence and prepared a complaint. He further deposed that Ext.P-10 alone is with his signature. He further stated that Vijaya had not given any complaint to him. Further it appears that PW-3 got the information through his Assistant one Kittu, but he was not examined as prosecution witness in S.C. No.39 of 1998. We have further noticed that the said Kittu was examined as PW-6 in S.C. No.148 of 1999 and did not support the case of the prosecution and was accordingly declared as hostile witness.

9. We have also noticed that the deceased along with his wife Vijaya had gone in a bicycle to redeem her jewels from Agricultural Co-operative Society and that the clerk had informed that the Secretary of the Society was not available there and, so they returned to their house in the same bicycle. The prosecution examined one Bhaskaran (PW-6), Clerk of the said Bank.

He stated that on the date of occurrence, Gopalakrishnan did not visit the said Bank. We have also noticed that it was correctly found by the High Court that the cycle got punctured and Gopalakrishnan took another cycle from the nearby shop and proceeded to his house. It would be further evident that the prosecution had produced M.O.11 and M.O.12 bicycles and according to PW-14, a Herojet Cycle was recovered from the place of occurrence. While PW-13, who is the Mahazar witness, deposed in the chief examination that only Hercules Cycle was recovered from the place of occurrence and not Herojet Cycle. It further appears from the evidence of PW-12 that soon after the occurrence, she had placed the body of her husband on her lap. But, interestingly, no blood-stained sari was recovered from PW-12, which creates doubt as to the very presence of PW-12 at the time and place of the said occurrence.

10. In these circumstances, we find that the High Court correctly noticed the said discrepancies which was also

found out by the Trial Court and thereafter correctly came to the conclusion that the prosecution has failed to prove the guilt of the accused beyond any reasonable doubt.

11. Decisions were cited at the Bar. In our opinion, in the facts and circumstances of the present case, it is not necessary to deal with each one of them. However, we have noticed in *Murugesan S/o Muthu and Ors. Vs. State through Inspector of Police*, (2012) 10 SCC 383, wherein this Court has noted that the principles laid down by the Privy Council in *Sheo Swarup v. King Emperor*, (1933-34) 61 IA 398 : AIR 1934 PC 227(2), have been followed by this Court in a series of subsequent pronouncements. *Sheo Swarup v. King Emperor* (supra) has also been considered and the general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal, has been culled out by this Court in *Chandrappa v. State of Karnataka*, (2007) 4 SCC 415, which are as follows:

(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced,

reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

12. Accordingly, we do not find any reason to interfere with the judgment and order so passed by the High Court. Hence, these appeals are dismissed.

.....J
(Pinaki Chandra Ghose)

JUDGMENT

.....J
(Uday Umesh Lalit)

New Delhi;
April 28, 2015.