REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2085 OF 2008

Mookkiah & Anr. .... Appellant(s)

Versus

State, rep. by the Inspector of Police,
Tamil Nadu .... Respondent(s)

J U D G M E N T

P.Sathasivam,J.

1) This appeal has been preferred against the final judgment and order dated 25.01.2007 passed by the Madurai Bench of the Madras High Court in Criminal Appeal No. 1137 of 1998 whereby the Division Bench of the High Court allowed the appeal filed by the State and set aside the order of acquittal of appellants herein dated 24.08.1998 passed by the IInd Additional Sessions Court, Tirunelveli in Sessions Case No. 264 of 1996.

2) The **facts** and **circumstances** giving rise to this appeal are as under:

(a) Uluppadi Parai is a small village in Ambasamudhram Taluk within Kallidaikurichi Police Station. The appellants herein (A-1) and (A-2) and the deceased were all the residents of the same hamlet situated in the aforesaid village. The residents of that hamlet had a nearby place as open air latrine which was situated near a water body.

(b) The deceased Ramaiah, in this case, was the son-in-law of Ramaiah (PW-1), who also had the same name as that of the deceased. Parvathi-daughter of PW-1, was married to the deceased-Ramaiah. 25 days prior to the incident, when she was staying at the residence of PW-1, the deceased-Ramaiah solicited the wife of Subbiah (A-2) to have illicit intercourse with him and A-2, after coming to know of such fact, harboured enmity in his heart against the deceased. The deceased was also having previous enmity with Mookkiah (A-1), who was residing in the same village.

(c) On 12.05.1992, at about 5.30 a.m., when the deceased Ramaiah went to the said open air latrine to attend to the

calls of the nature, A-1 and A-2, in furtherance of their common intention to murder Ramaiah, dealt blows on him using aruval (billhooks), thereby killed him on the spot itself and fled away from the scene. However, on the very same day, at about 05:30 hours, when Ramaiah (PW-1), the father-in-law of the deceased, Sudalaimuthu (PW-5) and Shanmugam (PW-4) were returning after pouring water into their field, they heard the cries of Ramaiah, son-in-law of PW-1, shouting "Don't attack, Don't attack". They immediately rushed to the spot and saw that the accused were attacking the deceased-Ramaiah on his head, neck, shoulder and back with their aruval and on seeing them, they fled away. Ramaiah (PW-1) and Sudalaimuthu (PW-5) both witnessed the ghastly crime and despite they shouted at the assailants not to perpetrate the gruesome act, the accused accomplished their task of murdering the accused.

(d) Thereupon, PW-1, PW-4, PW-5 and one Kanaka Raj, went to the Kallidaikurichi P.S. and PW-1 lodged a complaint against both the accused persons which was registered as

Crime No. 173 of 1992 under Section 302 of the Indian Penal Code, 1860 (in short 'IPC').

(e) After investigation, both the accused persons were arrested and charges were framed against them under Section 302 read with Section 34 of IPC and the case was committed to the Court of Session which was numbered as Sessions Case No. 264 of 1996.

(f) By order dated 24.08.1998, the trial Court, after giving the benefit of doubt, acquitted both the accused of the offences with which they were charged. Being aggrieved by the judgment of acquittal, the State preferred an appeal being Criminal Appeal No. 1137 of 1998 before the Madurai Bench of the Madras High Court.

(g) The High Court, after examining all the materials, by order dated 25.01.2007, reversed the judgment of acquittal and found A-1 and A-2 guilty of the offence under Section 302 read with Section 34 of IPC and sentenced them to suffer rigorous imprisonment (RI) for life alongwith a fine of Rs. 5,000/- each, in default, to further undergo RI for 6 months.

(h) Being aggrieved by the impugned judgment of the High Court, A-1 and A-2 (appellants herein) preferred an appeal before this Court under Article 136 of the Constitution of India.

3) Heard Mr. S. Nanda Kumar, learned counsel for the appellants-accused and Mr. S. Gurukrishna Kumar, learned senior counsel and AAG for the respondent-State.

Interference in Appeal against Acquittal:

4) It is not in dispute that the trial Court, on appreciation of oral and documentary evidence led in by the prosecution and defence, acquitted the accused in respect of the charges leveled against them. On appeal by the State, the High Court, by impugned order, reversed the said decision and convicted the accused under Section 302 read with Section 34 of IPC and awarded RI for life. Since counsel for the appellants very much emphasized that the High Court has exceeded its jurisdiction in upsetting the order of acquittal into conviction, let us analyze the scope and power of the High Court in an appeal filed against the order of acquittal This Court in a series of decisions has repeatedly laid down

that as the first appellate court the High Court, even while dealing with an appeal against acquittal, was also entitled, and obliged as well, to scan through and if need be re-appreciate the entire evidence, though while choosing to interfere only the court should find an absolute assurance of the guilt on the basis of the evidence on record and not merely because the High Court could take one more possible or a different view only. Except the above, where the matter of the extent and depth of consideration of the appeal is concerned, no distinctions or differences in approach are envisaged in dealing with an appeal as such merely because one was against conviction or the other against an acquittal. [Vide ***State of Rajasthan*** vs. ***Sohan Lal and Others***, (2004) 5 SCC 573]

5) In ***State of Madhya Pradesh*** vs. ***Ramesh and Another***, (2011) 4 SCC 786, this Court, while considering the scope and interference in appeal against acquittal held:

> **"15.** We are fully alive of the fact that we are dealing with an appeal against acquittal and in the absence of perversity in the said judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. It is settled proposition of law that the appellate

court being the final court of fact is fully competent to reappreciate, reconsider and review the evidence and take its own decision. Law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court and there can be no quarrel to the said legal proposition that if two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal."

6) In ***Minal Das and Others*** vs. ***State of Tripura***, (2011) 9 SCC 479, while reiterating the very same position, one of us, P. Sathasivam, J. held:

> **"14.** There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts, etc. the appellate court is competent to reverse the decision of the trial court depending on the materials placed."

7) In ***Rohtash*** vs. ***State of Haryana***, (2012) 6 SCC 589, this Court held:

> **"27.** The High Court interfered with the order of acquittal recorded by the trial court. The law of interfering with the judgment of acquittal is well settled. It is to the effect that only in exceptional cases where there are compelling circumstances and the judgment in appeal is found to be perverse, the appellate court can interfere with the order of the acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. (Vide *State of Rajasthan* v. *Talevar, (2011) 11 SCC 666* and *Govindaraju* v. *State, (2012) 4 SCC 722*)"

8) In a recent decision in ***Murugesan & Ors.*** vs. ***State Through Inspector of Police***, 2012 (10) SCC 383, one of us Ranjan Gogoi, J. elaborately considered the broad principles of law governing the power of the High Court under Section 378 of the Code of Criminal Procedure while hearing the appeal against an order of acquittal passed by the trial Judge. After adverting to the principles of law laid down in ***Sheo Swarup*** vs. ***King Emperor***, AIR 1934 PC 227 (2) and series of subsequent pronouncements in para 21 summarized various principles as found in para 42 of ***Chandrappa & Ors.*** vs. ***State of Karnataka***, (2007) 4 SCC 415 as under:

> **"21.** A concise statement of the law on the issue that had emerged after over half a century of evolution since *Sheo*

Swarup[1] is to be found in para 42 of the Report in *Chandrappa* v. *State of Karnataka*. The same may, therefore, be usefully noticed below: (SCC p. 432)

"*42*. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(*1*) An appellate court has full power to review, reappreciate 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*."

(emphasis supplied)

9) With the above principles, let us analyze the reasoning and ultimate conclusion of the High Court in interfering with the order of acquittal and awarding imprisonment for life.

10) Among the materials placed and relied on by the prosecution, complaint Exh.P-1, evidence of PWs 1, 2, 4 and 5 are relevant.

Complaint (Exh.P-1):

11) The complaint Exh. P-1 dated 12.05.1992 was made by Ramaiah (PW-1). In the complaint, it was stated that as his daughter-Parvathi was pregnant, she was brought to his house for delivery and a female child was born to her 25 days back. After delivery, her daughter stayed in his house with her child and his son-in-law Ramaiah stayed with his parents. It was further stated that on 12.05.1992, in the early morning, about 05.30 hours, when he was returning alongwith Sudalaimuthu and Shanmugam after pouring water to the plantation, at that time, they heard the shouting of his son-in-law “Don’t kill me”. On hearing the same, they rushed towards the spot and noticed that Subbiah (A-2) was having a big aruval (bill hook) in his hand and Mookkiah (A-1)

was holding a small aruval and were attacking on the face and back of Ramaiah-the deceased. When all the three went there shouting “Don’t cut, Don’t cut”, at that time, Subbiah (A-2) and Mookkiah (A-1) ran towards eastern direction. They noticed cut injuries on neck, shoulder back and head of his son-in-law and blood was oozing from the cut wounds. They also noticed that he was dead. Thereafter, all the three persons informed Alagamuthu, father of Ramaiah and the Village Headman about the same and later they along with others saw the dead body of Ramaiah. It was further stated that approx. one week before, Subbiah (A-2) met him and warned that his son-in-law Ramaiah called his (Subbiah’s) wife Mukkammal for sex and he threatened that he won’t spare him and as per the say, Subbiah and Mookkiah murdered his son-in-law Ramaiah. Thereafter, he along with Sudalaimuthu, Shanmugam, Kanaka Raj came to Kallidaikurichi P.S. at about 08.00 hours and informed the same which was recorded on 12.05.1992 at 08.06 hours and registered as Crime No. 173/1992 under Section 302 IPC. A perusal of Exh. P-1 complaint discloses the full narration of

the incident by PW-1 and the persons accompanied him and motive for murdering the deceased.

Evidence of PW-1:

12) Ramaiah (PW-1), who is none else than the father-in-law of the deceased, even in his evidence has narrated before the court what he had stated in the complaint (Exh. P-1). He also identified M.O. I and M.O.II Aruvals (billhooks). He further stated that with M.O. I small aruval, the accused Mookkiah was attacking and M.O. II-big aruval was used by accused Subbiah. He also noticed a pair of chappals (M.O. III), underwear (M.O. IV) near the corpse of his son-in-law. He also stated that it was he who preferred complaint to the police. The same was recorded by the Police Officer and attested by Kanaka Raj, Sudalaimuthu and Shanmugam. He also explained the statement made by Subbiah (A-2) one week prior to the incident warning him that his son-in-law called his wife for sex and he won't spare him for this. Even in lengthy cross-examination, he withstood his stand and reiterated that he along with two others saw the accused murdering his son-in-law. There is no reason to disbelieve

his version. Though the trial Court has rejected his evidence because of his relationship, we are of the view that merely because a witness is related, his evidence cannot be eschewed. On the other hand, it is the duty of the Court to analyze his evidence cautiously and scrutinize the same with other corroborative evidence. The High Court has rightly relied on his evidence and we fully agree with the course adopted by the High Court in relying upon his evidence.

Evidence of PW-4:

13) Though Shanmugam (PW-4) turned hostile at one stage, there is no reason to reject his entire evidence as unacceptable. It was he who accompanied PW-1 at the early hours and noticed that the accused were attacking the deceased by use of bill hooks. Similar to PW-1 and PW-5, PW-4 reiterated that he accompanied them after pouring water to their banana fields. Even though he did not support the prosecution case in its entirety, his version strengthen the evidence of PW-1 and PW-5.

Evidence of PW-5:

14) Sudalaimuthu (PW-5) is a resident of Ulappadi Parai. In his evidence, he has stated that 6 years back, on Chithirai month night, at about 8.00 p.m., when he was proceeding to banana thope to pass water, he noticed Ramaiah (PW-1) and Shanmugam (PW-4) were also passing water. After completing the work at the early morning, roughly 05.30 hours, while returning back along with PW-1 and PW-4, he heard a noise from the Southern side Ridge, namely, "Don't cut, Don't cut". On hearing the sound, all the three rushed to that place and noticed that Subbiah (A-2) and Mookkiah (A-1) were cutting the deceased Ramaiah. He further stated that on seeing them the accused ran away from the spot and they found that Ramaiah was done to death. They reported the incident to *Nattammai* Kanak Raj in the village and, thereafter, went to the P.S. around 08.00 o'clock and Ramaiah (PW-1) gave a statement to the police. In the said statement, viz., Exh. P-1, he also signed as a witness. He identified his signature in Ex.P-1. He was also present when the police inspected the scene of occurrence and during the

course of inquest. In the cross-examination, he reiterated what he had stated in the Chief-Examination.

15) A perusal of the evidence of PW-5 clearly shows that it corroborates with the statement made by PW-1 in all aspects. It also shows that PWs 1, 4 and 5 went to their banana fields to pour water during the said night and while returning back after finishing the work at around 5.30 a.m., they noticed the accused causing fatal injuries on the deceased by use of aruvals (billhooks). It also shows that all of them went to the P.S. and PW-1 made a complaint and other two attested the contents of Exh.P-1. The High Court has rightly relied on the evidence of PWs 1 and 5 and on going through their entire statement, we fully agree with the course adopted by the High Court.

Evidence of PW-2:

16) Dr. Tmt. Bhanumathi, (PW-2) who conducted post mortem on the dead body of the deceased Ramaiah was examined as PW-2. The post mortem report has been marked as Exh. P-3. In Exh.P-3, the doctor has noted the following injuries:

"Injuries:
(1) An incised wound extending from lower part of right cheek, above mandible, directed downwards to the middle of back of neck; obliquely placed and of sixe 14X6X6 cms. Blood vessels, muscles, C3, C4, vertebra cut, head partially hanging and blood clots present.
(2) An incised wound on centre of forehead close to midline extending to middle of scalp vertical in direction directed upwards and backwards size 14X4X6 cms. Underlying bone cut and brain matter coming out through the wound.
(3) An incised wound extending from middle of right side of back to right side of shoulder of size 20X6X6 cms. Oblique in direction, overlapping cut injuries on inferur border of wound, muscles, blood vessels cut, blood clots present. Right scapula injured and dislocated.
(4) An incised wound on right side of lower part of back below injury no.3, oblique in direction 12X4X2 cms. Blood vessels, muscles cut and blood clots present.
(5) An incised wound horizontal in direction 18X6X8 cms. Extending from left lower part of back of left waist fort side.
(6) An incised wound above injury no.5 oblique in direction on left side of lower part of back to right side crossing spine 12X6X4 cms. Blood vessels, muscles cut in the same direction.
(7) An incised wound on upper third of upper arm right, on lateral side extending to back of 12 X 4 shoulder, oblique in direction, blood vessels, muscles cut.
(8) An incised would on right upper arm, upper third on medical aspect, skin depth 5 X 2 cms. obliquely placed."

17) As rightly pointed out by the State counsel, the cut injuries observed by the doctor tally with the narration given by PW-1 in Exh.P-1 as well as in his evidence and the evidence of PW-5. The doctor also opined that the death of the deceased might have occurred 28-30 hours prior to the *post mortem*. It is not in dispute that the doctor commenced

the *post mortem* on 13.05.1992 at 10.30 hours and as per the prosecution case, the death of the deceased occurred at 05.30 a.m. on 12.05.1992. A perusal of these details clearly show that the opinion given by the doctor tallies with the prosecution version that the death might have occurred 28-30 hours prior to the post mortem. The trial Court, taking note of the evidence of PW-2 that there were around 300 grams semi digested food particles (rice) in the stomach of the deceased, disbelieved the time of occurrence as projected by the prosecution. It is true that PW-2, while deposing before the Court, answered in the cross-examination that the death might have occurred 34 hours prior to her performing the *post mortem* and the partly undigested rice would show that rice might have been consumed by the deceased 2-3 hours before his death. However, the Investigation Officer (PW-11), during the cross-examination, highlighted that during the course of his investigation, he ascertained from the father of the deceased that the deceased consumed food at 11.00 p.m. during the said intervening night. As rightly observed by the

High court, since the parties are hailing from a remote village, the villagers might take food even at odd hours after finishing certain work in their fields and it cannot be precisely predict based on the undigested food particles alone. The High Court has adverted to Modi's Medical Jurisprudence and Toxicology, 22nd Edition and after noting all the relevant details has rightly concluded that the observation of the doctor relating to the injuries and her general opinion at the time of death which occurred 28-30 hours tally with the narration of eye-witnesses and concluded that in such a case mere inference of the doctor with reference to undigested food particles could not threw the prosecution case. We fully agree with the discussion and the ultimate conclusion on this aspect by the High Court. The evidence of PWs 1 and 5 coupled with the version in Exh.P-1 would state that the occurrence took place at 5.30 a.m. while the deceased was passing stool, as such, the timings mentioned by the doctor, occurrence and other witnesses tally with the narration. Accordingly, we reject the contention raised by the counsel for the appellants with

reference to existence of undigested particles n the *post mortem* by PW-2.

Other objections:

18) Though an argument was advanced that there was delay in filing the FIR in the Court of the Magistrate, a perusal of the details placed by the prosecution show that the occurrence took place at 05.30 a.m. on 12.05.1992 and the FIR was registered on the same day at 08.00 hrs. and the Magistrate received the FIR on the same day at 02.00 p.m. As rightly observed by the High Court, it cannot be presumed that there was inordinate delay in reaching the FIR to the Magistrate Court. Further, it has come in evidence that Kallidaikurichi P.S. is situated at a distance which could be covered by cycle in 45 minutes and Abdul Rahman (PW-9), Police Constable Grade-I, who was attached with Kallidaikurichi P.S. at the relevant time has explained in his evidence that he took the complaint (Exh.P-1) and the FIR to the Magistrate Court and reached at around 10.15

a.m. but by that time Magistrate Court's sitting was commenced. PW-9 further explained that when he approached the Head Clerk, he informed PW-9 to hand it over to the Magistrate after the sitting hour was over as it happened to be an express FIR. There is no reason to disbelieve the version of the Police Constable (PW-9) and we hold that absolutely, there is no delay at all in either registering the FIR or dispatching the same to the Magistrate Court.

19) We have already noticed the motive as spoken to by PW-1 both in his evidence as well as in Exh.P-1. It was pointed out that no blood stains were noticed in the M.Os I, II and III, namely, aruvals (bill hooks) and dress in the FSL report. It was explained that since these objects were lying on the earth and by efflux of time, no blood was found by the laboratory because of which the same cannot be doubted when the same were duly recovered in the presence of witnesses.

20) In the light of the above discussion, we are satisfied that the trial Court failed to take note of relevant aspects

and committed a grave error in rejecting the reliable materials placed by the prosecution. The High Court as appellate court, analyzed the evidence as provided in Section 378 of the Code and rightly reversed the order of acquittal and found A-1 and A-2 guilty of offence under Section 302 read with Section 34 IPC for murdering Ramaiah in pursuance of their common intention and awarded sentence of life imprisonment. We fully agree with the said conclusion.

21) Consequently, the appeal fails and the same is dismissed.

.....J.
(P. SATHASIVAM)

.....J.
(RANJAN GOGOI)

NEW DELHI;
JANUARY 04, 2013.