SUPREME COURT OF INDIA

Murugesan S/o Muthu

Vs.

State through Inspector of Police

Crl.A.No.53 of 2009

(P. Sathasivam and Ranjan Gogoi JJ.)

12.10.2012

JUDGMENT

RANJAN GOGOI, J.

1. This appeal, under Section 379 of the Code of Criminal Procedure, 1973 is against the order of the High Court of Madras reversing the acquittal of the appellants and convicting and sentencing each one of them under different Sections of the Indian Penal Code (hereinafter shall be referred to as 'IPC'). All the accused persons have been convicted under Section 120 B of the IPC and sentenced to undergo rigorous imprisonment for a period of seven years each. The accused appellants have also been found guilty under Section 302 of IPC for their individual acts or constructively under Section 34/149 IPC for commission of the said offence. They have been accordingly sentenced to undergo rigorous imprisonment for life. Some of the appellants have also been found guilty of the offences under Section 148 and Section 332 read with Section 149 IPC for which sentence of rigorous imprisonment of three years have been imposed. Aggrieved the present appeal has been filed.

2. For the sake of clarity reference to the accused is hereinafter being made in the chronological order arranged in the proceedings of the trial and the three deceased, i.e., Veeraperumal, Karumpuli and Madaswamy are being referred to as D-1, D-2 and D-3 respectively.

> The case of the prosecution, in short, is that there was a land dispute between Karumpuli (D-2) and his family and A-1, Thirumani, and his party. There were civil litigations between the parties over the said property.

According to the prosecution, on account of the aforesaid dispute, the younger brother of the accused No.15 was murdered and in the said case D-1, D-2 and D-3 were arrayed as accused. At the relevant point of time, the three deceased persons were on bail. There was another case pending against D-1 and D-2 in respect of an incident of a bomb attack on the rival party. In connection with the said case, the aforesaid two deceased who were arrested were brought to the court of the Judicial Magistrate, Vilathikulam on the day of the occurrence, i.e. 22.09.1991 for execution of the bail bonds etc. so as to enable them to be released on bail. Thiru Bagavati (PW- 1), Alagar (PW-2), Periyasami (PW-3) and Kalimuthu (PW-4) along with D-3 had come to meet D-1 and D-2 in the court complex. On the same day, A-14, A-15, and A-16 who were also under arrest in another case were brought by the police to the court complex for purpose of further remand. The other accused persons had come to see A-14, A-15, and A-16. Both the groups, including the deceased and the accused who were brought from jail, were engaged in their respective conversations. According to the prosecution, at a point of time between 2.00 p.m. and 3.00 p.m., A-14, A-15 and A-16 asked the other members of the accused party who had come to meet them to finish off D-1 and D-2. On being so instigated, according to the prosecution, the other members of the accused party inflicted fatal injuries on D-1, D-2 and D-3. It is the further case of the prosecution that D-1, on being inflicted injuries by the accused persons, ran towards the Police Station, situated near the court complex and made a statement (Ex. P-1) based on which the FIR (Ex. 22) was registered by PW-27. Thereafter, the FIR was sent to the Court of Judicial Magistrate, Vilathikulam which was received at about 5.00. p.m. on the same day. The injured D-1 was shifted to the Government Hospital and on an intimation being sent by PW-20 Dr. Rajaram (Raj Mohan), Assistant Civil Surgeon attached to Government Hospital, the learned Judicial Magistrate (PW-6) came to the hospital to record the dying declaration of the injured, Veeraperumal. According to the prosecution, while his statement was being recorded, D-1, slipped into a coma and, thereafter, died at about 4.07 p.m. The dying declaration (Exh P-4) was recorded in the presence of Paulsama, Medical Officer (PW-21) who had certified that the injured (D-1) was in a fit condition to make the statement. It is the further case of the prosecution that the other injured namely, Karumpulli and Madasamy were also brought to the hospital but had died on the way.

It is further alleged by the prosecution that D-1 and D-2 were brought to the court complex from the jail premises by Police Constables Sankaranarayanan (PW-5) and Shanmugaraj (PW-7). Both the aforesaid

police constables, according to the prosecution, were eye-witnesses to the occurrence and they had submitted a report to the Judicial Magistrate, Vilathikulam (Ex. P-2) in this regard. The prosecution has further alleged that in the course of the attack by A-1 Thirumani, A-5 had also sustained injuries for which A-5 had filed a complaint and he was medically examined. The prosecution also claims that at the instance of A-7, five aruvals were recovered.

3. On the completion of the investigation, charge sheet was submitted against all the accused under different Sections of the IPC. The offences alleged being triable by the Court of Sessions, the case was committed for trial to the Court of the learned Sessions Judge, Tuticorin. The learned trial court framed charges against the present appellants (17 in number) and six others under Sections 120 B, 147, 148, 332 and 302 read with Section 34/109/149 of the IPC. The accused having pleaded not guilty were tried. In the trial held, 30 witnesses were examined by the prosecution who had also exhibited a large number of documents besides as many as 20 material objects. Three witnesses were examined on behalf of the defence and as many as 10 documents were also exhibited. The learned trial Judge by the judgment and order dated 16.04.1988 held that the charges levelled against the accused persons have not been proved beyond all reasonable doubt. Accordingly, all the 23 accused were acquitted. On an appeal being filed by the State, the High Court by the impugned judgment and order dated 04-09-2008/19-09-2008 had set aside the acquittal of A-1 to A-19 and convicted them under different Sections of the IPC. The acquittal ordered by the learned trial court in respect of A-20, A-21, A- 22, and A-23 was, however, maintained by the High Court. Of the 19 accused who have been convicted by the High Court, A-6 and A-11 have died in the mean time. Consequently, it is the 17 accused persons against whom the order of conviction continues to be effective who have instituted the present appeal.

4. A reading of the judgment dated 16.04.1998 passed by the learned trial court indicates that the learned court did not consider it prudent to act on the evidence of PW-1 inasmuch as it was found that there are certain innovations in the evidence tendered by the said witness who is also closely related to at least two of the deceased persons. PW-2, PW-3 and PW- 4 not having supported the prosecution case and having been declared hostile, the learned trial court thought it proper not to place any reliance whatsoever on the testimony of the said witnesses. The evidence of PW-5 and PW-7, the Police constables who had escorted D-1 and D-2 to the court complex from the prison, was elaborately considered by the learned trial court before coming to the conclusion that the evidence of the two aforesaid witnesses did not inspire the confidence of the court. The detailed reasons which

had persuaded the trial court to take the above view will be noticed in the discussions that will follow.

5. Coming to Ex. P-1, (complaint lodged by D-1 in the police station immediately after the incident) and the formal FIR lodged on that basis (Ex. P-22) the learned trial court was of the opinion that the said documents do not accurately reflect the situation as claimed to have taken place in view of the fact that FIR under Section 302 IPC was registered at 3.15 pm when the victims of the alleged assault were still alive.

6. In so far as Ex. P-2, i.e., the report lodged by PWs-5 and 7 before the Judicial Magistrate is concerned, the learned trial court was of the view that the involvement of any of the accused have not been mentioned in the said report which renders the same open to grave suspicion and doubt, besides affecting the oral testimony of PW-5 and PW-7 tendered in court later i.e. after five years wherein the names of the alleged attackers, i.e., the accused have been mentioned with complete certainty and precise accuracy. The dying declaration (Ex. P-4) of D-1 was also considered unsafe to be relied upon in view of the fact that the names of only three of the accused have been recorded in the dying declaration in contrast to the names of 11 accused that finds mention in Ex. P-1 and that charge sheet was eventually filed against 23 accused persons.

7. The learned trial court also considered the evidence of DW-1, DW-2, and DW-3 to hold that the said evidence proved and established the presence of A-4 in the office of the Sub-Registrar and A-12 in ITI, Thoothukudi rather than at the place of the occurrence at the time of the incident. The learned trial court, on the said finding, held the prosecution case to be false to the extent disproved by the defence evidence. It is on the aforesaid broad basis that the learned trial court thought it fit to come to the conclusion that in the present case the involvement of any of the accused has not been proved beyond reasonable doubt. Consequently, the learned court thought it proper to acquit all the accused persons from all such charges that had been levelled against them by the prosecution.

8. Specifically in so far as the charge of criminal conspiracy under Section 120 B IPC is concerned, the learned trial court took into account the evidence of A-15, A-16 and A-17, all of whom denied what the prosecution had alleged, namely, that on the day previous to the incident i.e. 21.09.1991, there was a meeting in the village where all the accused persons (except A-14, A-15 and A-16) had planned and conspired to murder D- 1 and D-2 on the next day when they were to be brought to Court. In this regard, the learned trial court also took into account the statement

made by the learned Public Prosecutor virtually admitting that, on the evidence adduced, no case of criminal conspiracy have been made out against any of the accused. In so far as A-20 to A-23 are concerned the learned trial court specifically came to the conclusion that no evidence whatsoever had been adduced by the prosecution to show the presence of any of the aforesaid accused persons at the time and place of occurrence.

9. The very elaborate judgment of the learned trial court has been considered in an equally elaborate and exhaustive discourse by the High Court in the appeal filed by the State of Tamil Nadu. In so far as the charge under Section 120B is concerned, the High Court was of the view that the materials on record had established that all the accused persons (except A-14, A-15 and A-16) had come to the court complex armed with dangerous weapons which was indiscriminately used on the victims merely at the call of A-14 to A-16. The said evidence, according to the High Court, conclusively proved the commission of the offence under Section 120 B of the IPC. The High Court was of the view that such a conclusion is the inevitable result of the process of inference by which proof of commission of the offence of criminal conspiracy was required to be reached in the present case.

10. In so far as the other offences are concerned, the High Court, after noticing the evidence adduced by the prosecution witnesses and the several documents brought on record, took the view that PW-2, PW-3 and PW-4, though were declared hostile, had supported the prosecution, at least to the extent that the three deceased persons and all the convicted accused were present in the court complex on the date and at the time when the occurrence is alleged to have taken place. Reliance to the aforesaid extent on the evidence tendered by the hostile witnesses, according to the High Court, is permissible in law and therefore the aforesaid part of the evidence could not be discarded in toto. The High Court, for the reasons set out in the impugned judgment, came to the conclusion that the evidence tendered by PW-5 and PW-7 is trustworthy and reliable. While the detailed reasons in this regard will be noticed in the subsequent paragraphs of this order along with the reasons set out by the learned trial court for taking the opposite view, once the aforesaid conclusion i.e. that PW-5 and PW-7 are reliable and trustworthy was reached by the High Court, the prosecution case had assumed an entirely different complexion. Proceeding further, the High Court also considered the evidentiary worth of the documents exhibited by the prosecution as Ex.P-1, Ex.P-2 and Ex.P-4 and held the said documents to be aiding the prosecution case. The doubts expressed by the learned trial court with regard to the said documents were answered by the High Court to be of no consequence for reasons that we will shortly notice and consider.

11. Coming to the defence evidence, the High Court was of the view that the evidence tendered by DW-1, DW-2, DW-3 did not conclusively prove the plea of alibi advanced on behalf of A-4 and A-12, inasmuch as such evidence did not establish the presence of the aforesaid two accused at the places claimed by them. However, in so far as A-20 to A-23 are concerned the High Court agreed with the findings of the learned trial court. Accordingly, while maintaining the acquittal of the aforesaid accused persons, i.e. A-20 to A-23, the High Court was of the view that the acquittal of all the other accused should be reversed and they are liable to be convicted for different offences, details of which have already been noticed. Thereafter, upon hearing each of the accused persons, the sentences in question, as already noted, were awarded.

12. We have heard Shri V. Kanagaraj, learned senior counsel for the appellants and Shri Guru Krishna Kumar, AAG for the State. We have given our anxious consideration to the submissions made on behalf of the rival parties and we have carefully considered the oral and documentary evidence adduced by the parties in the course of the trial.

13. Before proceeding any further it will be useful to recall the broad principles of law governing the power of the High Court under Section 378 Cr.PC, while hearing an appeal against an order of acquittal passed by a trial Judge.

14. An early but exhaustive consideration of the law in this regard is to be found in the decision of Sheo Swarup v. King Emperor[1] wherein it was held that the power of the High Court extends to a review of the entire evidence on the basis of which the order of acquittal had been passed by the trial court and thereafter to reach the necessary conclusion as to whether order of acquittal is required to be maintained or not. In the opinion of the Privy Council no limitation on the exercise of power of the High Court in this regard has been imposed by the Code though certain principles are required to be kept in mind by the High Court while exercising jurisdiction in an appeal against an order of acquittal. The following two passages from the report in Sheo Swarup (supra) adequately sum up the situation:

> "There is in their opinion no foundation for the view, apparently supported by the judgments of some Courts in India, that the High Court has no power or jurisdiction to reverse an order of acquittal on a matter of fact, except in cases in which the lower Court has obstinately blundered, or has through incompetence, stupidity or perversity reached such distorted conclusions as to produce a positive miscarriage of justice, or has in some other way so

conducted itself as to produce a glaring miscarriage of justice, or has been tricked by the defence so as to produce a similar result.

Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should, 'be placed, upon that power, unless, it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this however is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognized in the administration of justice. (page 229 of the report)"

15. The principles of law laid down by the Privy Council in Sheo Swarup (supra) has been consistently followed by this Court in a series of subsequent pronouncements of which reference may be illustratively made to the following:

Tulsiram Kanu v. State[2], Balbir Singh v. State of Punjab[3], M.G. Agarwal v. State of Maharashtra[4], Khedu Mohton v. State of Bihar[5], Sambasivan v. State of Kerala[6], Bhagwan Singh v. State of M.P.[7] and State of Goa v. Sanjay Thakran[8].

16. A concise statement of the law on the issue that had emerged after over half a century of evolution since Sheo Swarup (supra) is to be found in para 42 of the report in Chandrappa Ors. v. State of Karnataka[9]. The same may, therefore, be usefully noticed below:

"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, 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."

(emphasis is ours)

17. Another significant aspect of the law in this regard which has to be noticed is that an appeal to this Court against an order of the High Court affirming or reversing the order of conviction recorded by the trial court is contingent on grant of leave by this Court under Article 136 of the Constitution. However, if an order of acquittal passed by the trial court is to be altered by the High Court to an order of conviction and the accused is to be sentenced to death or to undergo life imprisonment or imprisonment for more than 10 years, leave to appeal to this Court has been dispensed with and Section 379 of the Code of Criminal Procedure, 1973, provides a statutory right of appeal to the accused in such a case. The aforesaid distinction, therefore, has to be kept in mind and due notice must be had of the legislative intent to confer a special status to an appeal before this court against an order of the High Court altering the acquittal made by the trial court.

The issue had been dealt with by this Court in State of Rajasthan v. Abdul Mannan[10] in the following terms, though in a different context :

> "12. As is evident from the above recorded findings, the judgment of conviction was converted to a judgment of acquittal by the High Court. Thus, the first and foremost question that we need to consider is, in what circumstances this Court should interfere with the judgment of acquittal. Against an order of acquittal, an appeal by the State is maintainable to this Court only with the leave of the Court. On the contrary, if the judgment of acquittal passed by the trial court is set aside by the High Court, and the accused is sentenced to death, or life imprisonment or imprisonment for more than 10 years, then the right of appeal of the accused is treated as an absolute right subject to the provisions of Articles 134(1)(a) and 134(1)(b) of the Constitution of India and Section 379 of the Code of Criminal Procedure, 1973. In light of this, it is obvious that an appeal against acquittal is considered on slightly different parameters compared to an ordinary appeal preferred to this Court."

18. Having dealt with the principles of law that ought to be kept in mind while considering an appeal against an order of acquittal passed by the trial court, we may now proceed to examine the reasons recorded by the trial court for acquitting the accused in the present case and those that prevailed with the High Court in reversing the said conclusion and in convicting and sentencing the accused appellants.

19. Insofar as the charge of criminal conspiracy under Section 120B IPC is concerned, there is no doubt and dispute that to prove the said charge the prosecution had examined PWs 15,16 and 17 who did not support the prosecution case in any manner at all. In fact, each of the aforesaid three witnesses categorically denied that they had made any statement before the Investigating Officer with regard to any agreement amongst the accused on 21.09.1991 to commit the murder of D-1 and D-2 on the next day when they were to be brought to the court. In fact it was noted by the learned trial court that the public prosecutor has virtually conceded that the evidence on record did not establish the charge of criminal conspiracy against any of the accused. The learned trial Judge, therefore, acquitted all the accused of the said charge. The view taken by the learned trial Judge was definitely a possible view. As against the same, the High Court came to the conclusion that, notwithstanding the evidence of PWs 15,16 and 17, the charge of criminal conspiracy has been established as the prosecution had succeeded in proving that the accused persons (except A-14, A-15 and A- 16) had come to the

place of occurrence armed with dangerous weapons and at the mere call of the said accused, they had attacked D-1, D-2 and D-3 with the weapons that they had brought. In this regard, the High Court relied on the fact that it is an established proposition of law that direct evidence of criminal conspiracy would rarely be forthcoming and a conclusion in this regard has to be, largely, inferential.

20. On a careful consideration of this aspect of the case, we find ourselves unable to agree with the conclusion of the High Court. Firstly, if the conclusion recorded by the learned trial court was a possible conclusion, the High Court ought not to have ventured further in the matter. Secondly, the aforesaid exercise, in our considered view, did not also occasion a correct conclusion inasmuch as the presence of the accused at the spot armed with weapons and responding to the call of A-14, A-15 and A-16 to attack the deceased, even if assumed, in the absence of any further evidence, cannot establish a prior arrangement/agreement or a meeting of minds amongst the accused to commit the offence of murder so as to sustain a charge of criminal conspiracy under Section 120B IPC.

21. Before going into the main issue in the case, namely, the culpability of any or all the accused under Section 302 IPC either on the basis of constructive liability under Section 34/149 IPC or on the basis of the individual acts of the accused, an incidental aspect of the case with regard to the plea of alibi set up by A-4 and A-12 can be conveniently dealt with at this stage. The plea of alibi set up on behalf of the aforesaid two accused on the basis of the evidence of DWs - 1, 2 and 3 was accepted by the learned trial court by holding that the defence evidence tendered in the case had established that at the time of the occurrence A- 12 was in the ITI, Tuticorin whereas A-4 was in the office of the Sub- Registrar, Tuticorin. Reading the evidence of DWs - 1, 2 and 3 and the documents exhibited in this regard (Ex. D-4, D-5, D-8, D-9, D-10) it is possible to take a view that aforesaid two accused were not present at the place of occurrence at the relevant time. The High Court answered the aforesaid issue by stating that as it was admitted by DW-1 in cross-examination that a student could leave the college after being marked present in the attendance register and as the sale deed (Ex.D-5) claimed to have been executed by A-4 in Tuticorin at the time of the incident did not specify the time of execution, the plea of alibi set up by A-4 and A-12 was not satisfactorily proved.

> The exercise undertaken by the High Court, once again, overlooks the basic principle of law that this Court has repeatedly emphasized in the matter of exercise of jurisdiction while hearing an appeal against an order of acquittal passed by the trial court. We are, therefore, unable to accord our approval to the manner in which the High Court had dealt with this aspect of the case.

22. This would now require us to consider the main issue in the case, namely, the liability of the accused appellants under the provisions of IPC other than those dealt with in the discussions that have preceded. The trial court considered it prudent to view the testimony of PW-1 with great care and circumspection as the said witness is the younger brother of one of the deceased. The learned trial court also took into account the fact that PW-1, though examined as an eye witness, could not specifically say as to which accused had assaulted which particular deceased and the weapon(s) used. That apart, the learned trial court took into account the fact that PW-1 had sought to implicate the acquitted A-20 to A-23 who, admittedly, were not present at the place of occurrence as stated by the investigating officer of the case examined as PW-30.

> The learned trial court while considering the evidence of PW-2, PW-3, and PW-4, took into account the fact that all the said witnesses are closely related to the deceased and that they were declared hostile by the prosecution. Specifically, it was noticed by the learned trial court that PW-2 had stated that immediately after incident had occurred he had run away from the place and had mingled with the crowd. PW-2 had further stated that he had not seen who had hacked whom. PW-3, it was noticed by the learned trial, had stated that he had returned to the place of the incident after taking lunch and, therefore, he did not see the occurrence. On the other hand, PW-4 had stated that the assault was committed by a group of men and had not named any particular accused. In such circumstances the learned trial court came to the conclusion that the conviction of any of the accused under Section 302 IPC either for their individual acts or on the principle of constructive liability under Section 34/149 IPC would not be warranted on the basis of the evidence of PWs 1 to 4.

23. The learned trial court, thereafter, proceeded to examine the evidence of PW-5 and PW-7, the police constables who had escorted D-1 and D- 2 to the court complex. On such consideration, the learned trial court came to the finding that the evidence of PW-5 regarding pelting of stones on him and PW-7 by some of the accused was unacceptable as no resultant injuries are recorded in the wound certificates (Ex. P-15 and P-16). In this regard, the learned trial court also noticed that the injuries mentioned in the aforesaid wound certificates were caused by aruval and knife and ,further, that neither PW-5 nor PW-7 had informed the doctor about any injuries being caused by pelting of stones. The apparently false involvement of A-20 to A-23 in the incident made by PWs - 5 and 7; the wrong identification of several of the accused made in court by PW-5 and PW-7; the

absence of any test identification parade are the other circumstances that was taken note of by the learned trial court to arrive at the conclusion that the evidence of PW-5 and PW-7 is not reliable. The injuries on PW-5 claimed to have been caused by an aruval was also found by the learned trial court not to be free from doubt or ambiguity. This is because, according to PW-5, he had tried to prevent the blow dealt with the aruval by A-17, which fell on the 'rifle but' carried by him and had also injured him on the left hand. The rifle carried by PW-5, however, was not exhibited in the trial. Moreover, according to the prosecution, D-1 was examined at about 3.25 p.m and PW-5 and PW-7 were examined between 4.05 and 4.15 p.m. PW-5 in his deposition had, however, stated that he along with PW-7 was treated around 5.45 – 6.00 p.m. and at that time D-1 was also in the hospital undergoing treatment. All these facts were duly taken note of along with the oral and documentary evidence adduced by the prosecution to show that D-1 had died at 4.07 PM.

24. Apart from the above inconsistencies which were considered by the learned trial court to be grave and severe, the fact that the FIR registered at 3.15 p.m. was so registered, inter alia, under Section 302 IPC though, admittedly, the deceased persons were alive at that time was also taken note of by the learned trial court as being a significant aspect of the case which required an explanation from the prosecution which was not forthcoming. The discrepancies between Ex. P-1 wherein 11 accused were named and Ex. P-2 where none of the accused were named and the contents of Ex. P-4 where only three accused were named were duly taken note of by the learned trial court apart from the fact that in Ex. P-2 it had been stated that 4-5 persons from outside had come and committed the assault. The prosecution had alleged that A-5 had received cut injuries on his forehand and 4 of his fingers had been severed due to an aruval blow aimed by A-1 on D-1 which fell on A-5. The fact that the FIR filed with regard to injuries caused to A-5 by A-1 had ended in a closure report had also been considered by the leaned trial court. The non-examination of any disinterested witnesses though several such persons had witnessed the incident is an additional circumstance that was relied upon by the learned trial court to come to the conclusion that the accused appellants should be exonerated of the charges levelled against them.

25. In the above facts can it be said that the view taken by the trial court is not a possible view? If the answer is in the affirmative, the jurisdiction of the High Court to interfere with the acquittal of the accused appellants, on the principles of law referred to earlier, ought not to have been exercised. In other words, the reversal the acquittal could have been made by the High Court only if the conclusions recorded by the learned trial court did not reflect a possible view. It must be

emphasized that the inhibition to interfere must be perceived only in a situation where the view taken by the trial court is not a possible view. The use of the expression "possible view" is conscious and not without good reasons. The said expression is in contradistinction to expressions such as "erroneous view" or "wrong view" which, at first blush, may seem to convey a similar meaning though a fine and subtle difference would be clearly discernible.

26. The expressions "erroneous", "wrong" and "possible" are defined in the Oxford English dictionary in the following terms:

"erroneous : wrong;incorrect.

wrong : 1. not correct or true, mistaken

2. unjust,dishonest or immoral possible : 1. capable of existing, happening, or being achieved.

2. that may exist or happen, but that is not certain or probable."

27. It will be necessary for us to emphasize that a possible view denotes an opinion which can exist or be formed irrespective of the correctness or otherwise of such an opinion. A view taken by a court lower in the hierarchical structure may be termed as erroneous or wrong by a superior court upon a mere disagreement. But such a conclusion of the higher court would not take the view rendered by the subordinate court outside the arena of a possible view. The correctness or otherwise of any conclusion reached by a court has to be tested on the basis of what the superior judicial authority perceives to be the correct conclusion. A possible view, on the other hand, denotes a conclusion which can reasonably be arrived at regardless of the fact where it is agreed upon or not by the higher court. The fundamental distinction between the two situations have to be kept in mind. So long as the view taken by the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, the view taken by the trial court cannot be interdicted and that of the High Court supplanted over and above the view of the trial court.

28. A consideration on the basis on which the learned trial court had founded its order of acquittal in the present case clearly reflects a possible view. There may, however, be disagreement on the correctness of the same. But that is not the test. So long as the view taken is not impossible to be arrived at and reasons therefor,

relatable to the evidence and materials on record, are disclosed any further scrutiny in exercise of the power under Section 378 Cr.P.C. was not called for.

29. However, as the High Court had embarked upon an in-depth consideration of the entire evidence on record and had arrived at conclusions contrary to those of the trial court, the discussions now will have to centre around the basis disclosed by the order of the High Court for reversing the acquittal of the accused appellants. The grounds that had prevailed upon the High Court to hold that the commission of the offence of criminal conspiracy under Section 120 B IPC have been proved by the prosecution in the present case have already been noticed. Our reasons for disagreeing with the said view of the High Court have also been indicated hereinabove. Similarly, the reasons for our disagreement with the conclusion of the High Court that the defence evidence adduced in the case did not satisfactorily establish the plea of alibi put forward by A-4 and A-12 have also been indicated. The aforesaid aspects of the case, therefore, would not need any further dilation and it is the reasons for the conviction of the accused appellants under Section 302 and the other provisions of the IPC will be required to be noticed by us.

30. The High Court has concluded that the evidence of PW-1, PW-2, PW-3 and PW-4 have supported the prosecution case to a certain extent and the said fact could not have been ignored only because PW-2, PW-3 and PW-4 were declared hostile. Even if the aforesaid reasoning of the High Court is to be accepted what would logically follow therefrom is that the evidence of PW-1, PW-2, PW-3 and PW-4, at best, shows the presence of the convicted accused and the deceased at the place of occurrence on the day of the incident. In so far as the evidence of PW-5 and PW-7 is concerned, the High Court was of the view that the failure to mention the names of any of the convicted accused in Ex. P-2 can be explained by the fact that PW-5 and PW-7 must have been in a state of shock and, furthermore, Ex. P-2 was a report to the Magistrate, not of the incident as such, but a report of what had happened to the prisoners who were brought by PW-5 and PW-7 from the jail for production in the court. The errors on the part of PW-5 and PW-7 in identifying some of the accused in Court have been understood by the High Court to be on account of the long lapse of time between the incident and date of their examination in Court (5 years). The absence of any Test Identification Parade, according to the High Court, did not materially affect the prosecution case, as PW-5 and PW-7 had stated in their evidence that the accused used to frequently come to police station in connection with other cases in which they were involved.

31. We find it difficult to agree with the view taken by the High Court on the above aspects of the case. Not mentioning the name of any of the accused in the

report submitted to the court i.e. Ex. P-2, particularly, when according to PW-5 and PW-7, the accused persons were known to them is a vital lacuna which cannot be explained by confining the scope of the said report as has been done by the High Court. At the same time, the narration of the names of several of the accused in the examination of PW-5 and PW-7 in court, in our view, would cease to be a mere discrepancy with reference to the earlier version of the witnesses as mentioned in Ex. P-2. The same would amount to an improvement or an exaggeration on the part of the prime witnesses of the prosecution thereby casting a serious doubt on their reliability. PW-5 and PW-7 are supposed to be members of a disciplined force. The lacuna in Ex. P-2 (absence of any names) cannot be reasonably understood to be on account of any shock suffered by the witnesses due to the incident. The failure on the part of PW-5 and PW-7 to use the fire arms issued to them despite an assault committed by as many as 23 persons resulting to the death of three, as the prosecution has alleged, is both mysterious and inexplicable. So is the registration of the FIR under Section 302 IPC at 3.15 p.m. when the deceased persons were still alive. The efficacy of the dying declaration (Ex. P-4) when the maker thereof had slipped into a coma even before completing the statement would have a serious effect on the capacity of D-1 to make such a statement. The certification made by PW-21 with regard to the condition of the deceased is definitely not the last word. Though ordinarily and in the normal course such an opinion should be accepted and acted upon by the court, in cases, where the circumstances so demand such opinions must be carefully balanced with all other surrounding facts and circumstances. All the above, in our view, demonstrates the fragile nature of the conclusions reached by the High Court in the present case.

32. For the above reasons, we hold that conviction of the accused appellants recorded by the High Court under the different provisions of the IPC and the sentences imposed cannot be sustained. We accordingly allow this appeal, set aside the judgment and order dated 4.9.2008 19.09.2008 passed by the High Court of Madras and confirm the order of acquittal dated 16.04.1998 passed by the learned trial court. The accused appellants, if in custody, be released forthwith unless required in any other case.

[1] AIR 1934 PC 227 (2)
[2] AIR 1954 SC 1
[3] AIR 1957 SC 216
[4] AIR 1963 SC 200
[5] (1970) 2 SCC 450
[6] (1998) 5 SCC 412
[7] (2002) 4 SCC 85

[8] (2007) 3 SCC 755
[9] 2007 (4) SCC 415
[10] 2011 (8) SCC 65