

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

CRL.O.P.No.21795 of 2017

in

Cr1.A.SR.No.31972 of 2017

T.Subramanian

.. Petitioner

vs.

1. State by  
Inspector of Police  
Sendurai Police Station  
Sendurai  
[Cr.No.196 of 2017]

2.Sreenivasan

3.Paramasivan

4.Kannan @ Kamalakannan

5.Vijayakumar

6.Sakthivel

7.Vetrivel

8. Amulmozhi

.. Respondents

Criminal Original Petition filed under Section 372 r/w.378  
(3) Cr.P.C 1973 to grant special leave to appeal against the  
judgment in S.C.No.100 of 2015 on the file of Principal District  
and Sessions Judge, Ariyalur.

For Petitioner : Mr.Ramprakash Rajagopal

For Respondent : Mr.K.Madhan  
Government Advocate for R1  
No appearance for R2 to R5,  
R7& R8

O R D E R

It is the case of the defacto complainant that they were  
having some disputes with the accused in relation to a compound  
wall that was existing in their house and pursuant to that, it  
is alleged by the defacto complainant that on 19.12.2007, the

accused barged into the house of the defacto complainant in the night hours and after criminally intimidating the defacto complainant and his wife, they razed the compound wall to the ground. In respect of this incident, FIR in Cr.No.196 of 2007 was registered on 22.12.2007 and after completing the investigation, the police filed a charge sheet in P.R.C.No.53 of 2015 before the learned Judicial Magistrate, Ariyalur against the accused herein for the offences under Sections 148, 448, 427, 506(ii) and 294(b) of Indian Penal Code and Section 3 of the TNPPDL Act.

2. On the appearance of the accused, they were furnished with copies of the final report and relied upon documents required under Section 207 Cr.P.C and the case was committed to the Court of Sessions in S.C.No.100 of 2015 and was made over to the I Additional District and Sessions Judge, Ariyalur. The trial Court framed charges against the accused for the offences under Section 148, 448, 427, 506(ii), 294(b) of Indian Penal Code and Section 3 of the TNPPDL Act and when the accused were questioned, they pleaded "not guilty".

3. On behalf of the prosecution, 7 witnesses were examined, 7 exhibits and two material objects were marked. When the accused were questioned about the incriminating circumstances under Section 313 Cr.P.C, they denied the same, but Accused No.3 submitted that on 19.12.2007, there was heavy rain in the area and only on account of that the compound wall had given way. Along with his 313 statement, he also submitted a record issued by the Executive Engineer, Public Works Department to the effect that there was 98.0mm of rain in the village on that day. After considering the arguments on both sides, the trial Court, by order dated 25.10.2016, acquitted the accused of all the charges. Aggrieved by the acquittal, the defacto complainant has preferred this appeal in terms of the proviso to Section 372 Cr.P.C.

4. Heard Mr.Ramgopal, learned counsel for the defacto complainant, who submitted that the trial Court has grievously erred in acquitting the accused by not taking into consideration the evidence of PW1 and PW2, who were witnesses to the occurrence. He also submitted that PW5 had turned hostile, but in the cross-examination by the Public Prosecutor, he admitted the case of the prosecution.

5. This Court gave its anxious consideration to the submissions of Mr.Ramgopal.

6. In *Arulvelu & Anr vs State Rep By Public Prosecutor* and another reported in (2009) 10 SCC 206, the Supreme Court has held as follows:

"36. Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment can not be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law."

7. Bearing in mind the law laid down by the Supreme Court, if the evidence on record and the trial Court order are scrutinized, it is seen that, though the incident is said to have taken place on 19.12.2007, the complaint itself was given only 3 days later and the FIR was registered only on 22.12.2007 for which there is no plausible explanation by the prosecution. Admittedly, there were civil disputes between the defacto complainant's family and the family of the accused. Thus, motive is a double edged weapon inasmuch as it can be used either by the defacto complaint to foist a false case against the accused and it can also form the basis for the accused to injure the defacto complainant. In this case, the trial Court has had the opportunity to see the demeanour of the prosecution witnesses. Though PW1 and PW2 had stated that the accused had damaged the compound wall, yet in their cross-examination they had denied that there was rain fall on the said date, but whereas the accused had taken a consistent plea that the compound wall had given way on account of heavy rain on 19.12.2007, to probalize which A3 had submitted the record issued by the Executive Engineer PWD, wherein it is stated that there was 98.0 mm rain on the said date. That apart, the trial court has analysed the photographs that were taken at the place of occurrence, which obviously showed that the damaged compound wall was soaked in water. In the light of such materials, the trial Court had deemed it fit to acquit the accused.

8. When there are two views possible, this Court should take into consideration the view that supports the defence plea

especially in an appeal against acquittal. Hence, this Court does not find any serious infirmity or perversity in the trial Court order acquitting the accused warranting interference by this Court.

Under such circumstance, the leave petition is rejected.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gpa

To

1.The Inspector of Police  
Sendurai Police Station  
Sendurai

2.The Public Prosecutor,  
High Court, Madras.

CrI.O.P.No.21795 of 2017 in  
CrI.A.SR.No.31972 of 2017

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