

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 07.11.2017

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.O.P. No.23850 of 2017
in CrI.A.SR.No.23318 of 2017

N.Arul Gnanam

.. Petitioner

Versus

1.Subramaniam @ Sundaram

2.Velusamy @ Murthy

3.Jothimani

4.Latha

5.The Inspector of Police,
Varapalayam Police Station,
Gobichettipalayam Taluk,
Erode District.

.. Respondents

Prayer: Petition filed under Section 378(4) of Cr.P.C. to grant leave to file the Criminal Appeal against the judgment dated 18.07.2016 made in S.C. No.82 of 2014 on the file of the Assistant Sessions Court, Gobichettipalayam.

For petitioner : Mr.C.Ramkumar

ORDER

This petition is filed to grant leave to file the Criminal Appeal against the judgment dated 18.07.2016 made in S.C. No.82 of 2014 on the file of the Assistant Sessions Court, Gobichettipalayam.

2.It is the case of the prosecution that one Ponnusamy, Ramasamy and Angappan who were brothers, effected partition of their properties under which a house came to the share of Ponnusamy and Ramasamy and another house came to the share of Angappan. P.W.1 to P.W.4 who belonging to the same family were tenants in the house of Ponnusamy and Ramasamy and A1 to A5 were tenants in the house of Angappan. It is the further case of the prosecution that there was an access to the main road and that the accused were preventing the family members of P.W.1 from using the pathway. On account of which there were disputes

between them. This was projected as the motive for the offence.

3.It is the further case of the prosecution that on 01.01.2013 around 8.00 a.m., A1 to A5 came to the house of P.W.1 to P.W.4 and attacked them with knife resulting in serious injuries. P.W.1 to P.W.4 were admitted to the hospital and on the complaint (Ex.P1) given by P.W.1, a case in Crime No.2 of 2013 was registered by the police for the offence under Sections 147, 148, 307 (2 counts), 323, 325 read with 149 I.P.C. against the accused and investigation was taken up by the Inspector of Police, who went to the place of occurrence and prepared the observation mahazar (Ex.P2) and seizure mahazar (Ex.P3). The accused were arrested on 01.01.2013 and that confession statements were recorded through which weapon namely Iron Pipe (M.O.1) was seized. The Inspector of Police examined the victims, the Doctors who treated them and other witnesses, and filed a final report in P.R.C. No.8 of 2013 before the Judicial Magistrate II, Gobichettipalayam and on the appearance of the accused, they were furnished with the documents under Section 207 Cr.P.C. and the case was committed to the Court of Sessions in S.C. No.82 of 2014 and was made over to the Assistant Sessions Court, Gobichettipalayam, Erode for trial. The Trial Court framed charges for the offence under Sections 147, 148, 307 (2 counts), 323, 325 read with 149 I.P.C. and the accused pleaded not guilty. To prove the case, the prosecution examined 15 witnesses and marked 16 Exhibits and 5 material objects.

4.When the accused were questioned about the incriminating circumstances appearing against them under Section 313 Cr.P.C., they denied the same. On behalf of the accused, one witness namely Dr.John Gurupatham (D.W.1) was examined and Exs.D1 to D15 were marked. After analysing the evidence on record and hearing either side, the Trial Court, by order dated 18.07.2016, has acquitted the accused, challenging which P.W.2 defacto complainant/victim has filed the present petition against acquittal with special leave to appeal.

5.Heard the learned counsel for the petitioner.

6.It is a trite law that leave to appeal need not be granted on the mere asking and that it should be prima facie shown that the Trial Court's order suffers from perversity in law or on facts. It may be apposite to refer to the following passage from the judgment of the Supreme Court in Arul Velu and another vs. State represented by the Public Prosecutor and another reported in 2009 (10) SCC 206:

"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.It is the specific case of P.W.1 to P.W.3 that on account of the pathway dispute, the accused came to their house and attacked them on 01.01.2013 and caused injuries, but, whereas, it is the specific case of the accused that it was the complainant's family who were the aggressors and they had attacked the members of the accused family namely A1 to A5

indiscriminately with weapons resulting in serious injuries which has been suppressed by the police.

8.On a reading of the evidence of P.W.1 to P.W.3, it is seen that they have stated that the accused were aggressors, but had denied any retaliation by them. The Doctor who examined the witness, has opined that the injury sustained by P.W.1 was grievous, but, whereas, the injury sustained by P.W.2 and P.W.3 were simple. In the evidence of P.W.1, 2 and 3, they have not stated anything about the injuries suffered by A1, A4 and A5. The treatment records of the accused were marked as Exs.D6, D7, D8, D9 and D13. The police have completely suppressed these facts, but, however in the cross examination of the investigation officer, he has stated that on the complaint given by A2, F.I.R. (Ex.D11) was registered in Crime No.3 of 2013 under Sections 323, 324 I.P.C. against the complainant's party, but the same was closed as mistake of fact. In a case of this nature, where two groups have clashed, it is not improper for the police to register two F.I.Rs as in this case. However, at the time of filing of final report and during trial, police must come forward with evidence to show that the complainant's party were not the aggressors, but, only the accused party were the aggressors and that the complainant's party had inflicted the injuries on the accused for self defence. Such a course was not adopted by the police. P.W.1, P.W.2 and P.W.3 never spoke about the injury inflicted by them on A1 to A5. Thus, when there has been suppression of the genesis of the case, the case of the prosecution becomes doubtful. The Trial Court which has had the opportunity to see the demeanor of all witnesses, has disbelieved the evidence of P.W.1 to P.W.3 with regard to the alleged attack and has acquitted the accused. This Court does not find any serious infirmity in the order of acquittal by the Trial Court warranting interference.

9.In the result, this is not a fit case to grant leave to appeal and accordingly stands dismissed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

vga

To

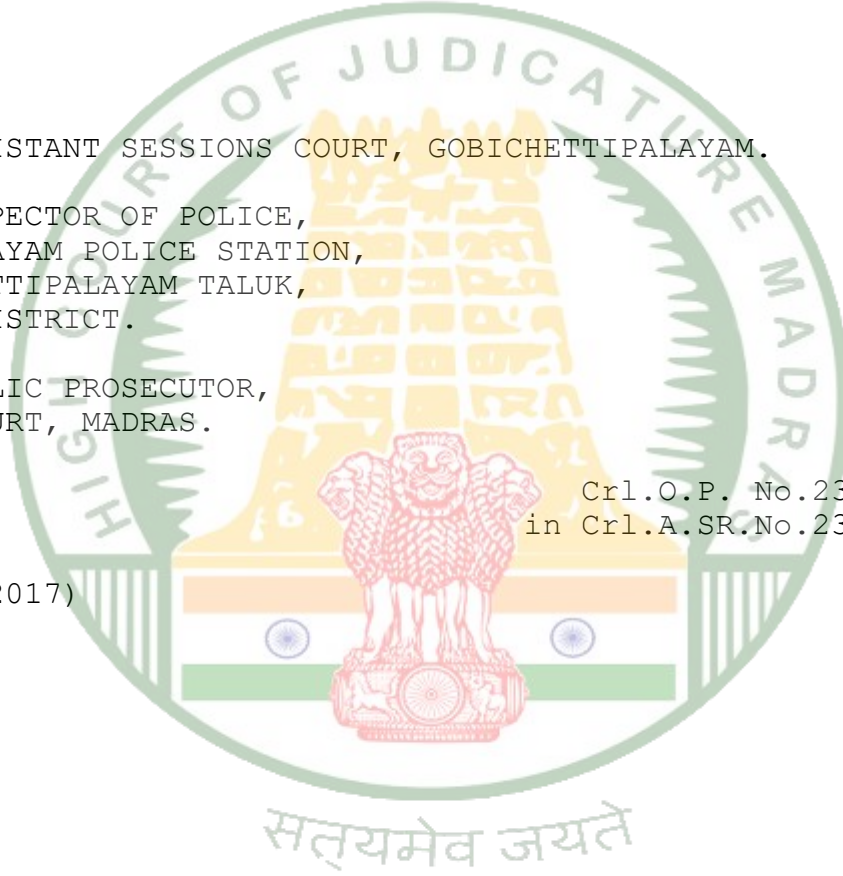
1.THE ASSISTANT SESSIONS COURT, GOBICHETTIPALAYAM.

2.THE INSPECTOR OF POLICE,
VARAPALAYAM POLICE STATION,
GOBICHETTIPALAYAM TALUK,
ERODE DISTRICT.

3.THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

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