

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Crl.O.P.No.24009 of 2017

in

Crl.A.No.SR36741 of 2017

State represented by:

The Public Prosecutor,
High Court, Madras-104.

(Perambalur P.S.,
Crime No.819/2010)

...Petitioner/Appellant/Complainant

versus

1.Chinnadurai

2.Rajathi

3.Boopalan

4.Ganapathy

5.Dharmaraj

6.Lakshmi

...Respondents/Accused
(A-1 to A-6)

Criminal Original Petition filed under Section 378 (3) Criminal Procedure Code to grant leave to file an appeal to this Court against the judgment dated 31.01.2017 passed in Sessions Case No.11/2012 by the Chief Judicial Magistrate Court, Perambalur District.

For Petitioner : Mr.Mathan
Government Advocate (Crl.side)

For Respondents : Mr.C.Ramkumar
for R1, R2, R4, R5 and R6.

ORDER

This Criminal Original Petition has been filed under Section 378 (3) Criminal Procedure Code to grant leave to file an appeal against the judgment dated 31.01.2017 in Sessions Case No.11/2012 passed by the learned Chief Judicial Magistrate, Perambalur District.

<https://hcservices.ecourts.gov.in/hcservices/>

2.It is the case of the prosecution that Selvaraj (P.W.1) and Boobalan (A.3) are brothers and that there were disputes

between them with regard to their family properties. It is the case of Selvaraj (P.W.1) that the house property, bearing D.No.133/133A was allotted to him, whereas it is the assertion of Boobalan (A.3) that the said house was in his possession and that his brother Selvaraj (P.W.1) was allotted D.Nos.127 and 128.

3. Admittedly, there were several litigations between the two brothers after the demise of their father. While so, it is the specific case of Selvaraj (P.W.1) that on 13.08.2010 around 3.00 p.m., Chinnadurai (A.1), Rajathi (A.2), Boobalan (A.3), Ganapathy (A.4), Dharmaraj (A.5) and Lakshmi (A.6) barged into his house and attacked him and his wife Dhavamani with an iron rod with an intention to kill them.

4. After the attack, Selvaraj (P.W.1) and Dhavamani (P.W.2) got themselves admitted in the hospital and that complaint (Ex.P.1) was given by Selvaraj (P.W.1). The respondent police registered the First Information Report (Ex.P.7) in Crime No.819 of 2010 and took up investigation. After completing the investigation, the police filed a final report against six accused under Sections 147, 148, 294(b), 325, 326 and 307 IPC r/w 149 IPC before the learned Judicial Magistrate, Perambalur, which was taken on file in P.R.C.No.38 of 2011 and on the appearance of the accused, they were furnished with the copies of the relied upon documents under section 207 Cr.P.C and the case was committed to the Court of Sessions in S.C.No.11 of 2012 and was made over to the learned Chief Judicial Magistrate/ Assistant Sessions Judge, Perambalur for trial.

5. The trial Court framed charges under Sections 147, 148, 294 (b) 324, 326, 307 r/w 147 IPC against all the accused and when the accused were questioned, they pleaded not guilty.

6. On behalf of the prosecution, nine witnesses were examined, sixteen exhibits were marked and no material objects were marked. When the accused were questioned about the incriminating circumstances, appearing against them under Section 313 of Cr.P.C., they denied the same.

7. On behalf of the accused, Boobalan (A.3) and his wife Rajathi (A.2) examined themselves as witnesses and marked seven exhibits. After considering the evidence adduced by the prosecution and the accused and after hearing the learned counsel on either side, the trial Court by judgment dated 31.01.2017, acquitted the accused, aggrieved by which, the State has filed the present petition seeking leave for filing an appeal against acquittal.

8. Heard Mr.Madhan, learned Government Advocate (Crl.Side).

9. Before deciding the issue at hand, it may be necessary to extract the following passage from the judgment of the Supreme Court in Arulvelu & another vs. State rep. by the Public Prosecutor and another [2009 (10) SCC 206]:

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."

10.The learned Government Advocate (Crl.Side) submitted that the trial Court has failed to appreciate the evidence of the injured witnesses viz., Selvaraj (P.W.1) and Dhavamani (P.W.2) and their evidence was corroborated by the doctors, who treated them for injuries.

11.Normally, the accused will never get into the witness box. However, in this case, Boobalan (A.3) and his wife Rajathi (A.2) have waived their right of silence and have come forward to examine themselves as witnesses.

12.In the evidence of Boobalan (D.W.1) and Rajathi (D.W.2), they have stated that they were in the occupation of the house bearing D.No.133A that was allotted to them and that Selvaraj (P.W.1) being a very influential and monied person was setting up hirelings to disposses of them and that on 13.08.2010 Selvaraj (P.W.1) and his minians forcibly entered the house, ransacked and damaged the house and attacked Rajathi and Boobalan, resulting in injuries to them and they went to the Police Station and lodged a complaint and the police gave them a hospital memo Ex.D.1, with which, they were treated in the Government Hospital. Boopalan (A.3) / (D.W.1) has marked the copy of the Accident Register as Ex.D.2, which shows injuries sustained by him contemporaneously. That apart, he has marked ten photographs (Ex.D.3 series) showing the damage that was caused to his house.

13.The trial Court has, thus, had an opportunity to appreciate the demeanor of the prosecution witnesses and the defence witnesses and thereafter, the trial Court acquitted the accused. That apart, police have not even recovered the weapons that were allegedly used by the accused nor the bloodstained clothes of the injured.

14.Thus, in this case, it is seen that the accused have not only dented the case of the prosecution by showing contradictions in the evidence of Selvaraj (P.W.1) vis-a-vis the evidence of Dhavamani (P.W.2), Rajadurai (P.W.3) and Raji (P.W.4) but, they have also gone one step ahead by examining themselves as defence witnesses and cogently established that they were injured in the incident, for which, they have marked hospital memo (Ex.D.1) and Accident Register (Ex.D.2).

15.Thus, when there are two views possible, one in favour of the accused and the other in favour of the complainant, the view favouring the accused should be considered in an appeal against acquittal.

16.That apart, Boobalan (A.3) / (D.W.1) has died on 17.07.2016, after giving evidence, but, before the judgment was delivered by the trial Court. In such view of the matter, this Court is of the opinion that this is not a fit case to grant leave to appeal.

17.Accordingly, this Criminal Original Petition stands dismissed, Consequently, connected Criminal Appeal is rejected at the S.R. stage itself.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

cla/kv

To

- 1.The Chief Judicial Magistrate,
Perambalur.
- 2.The Judicial Magistrate,
Perambalur.
- 3.The District and Principal Sessions Judge,
Perambalur.
- 4.The Inspector of Police,
Perambalur Police Station,
Perambalur.
- 5.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.Ram Kumar, Advocate SR.No.80279

Cr1.O.P.No.24009 of 2017
in
Cr1.A.No.SR36741 of 2017

KJI (CO)
GN(29/11/2017)