

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2017

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL. O.P. NO.24603 OF 2016
IN
CRL. A. SR. NO. 28097 OF 2016

Vennila

.. Petitioner

- Vs -

1. The Inspector of Police
E-1, Mylapore Police Station
Chennai - 4.

2.Kalivaradhan

.. Respondents

Criminal Original Petition filed under Section 378 (4) of the Code of Criminal Procedure to grant special leave to prefer appeal from the order of acquittal dated 10.03.2016 passed by the learned XVII Addl. Sessions Court, Chennai, made in S.C. No.213 of 2015.

For Petitioner : Mr. R.Rajesh Kumar

For Respondents: Mr. K.Madhu, GA (Crl. Side), for R-1
Mr. K.Than Rajan for R-2

ORDER

This Criminal Original Petition has been filed seeking grant of special leave to prefer an appeal from the order of acquittal dated 10.03.2016 passed by the learned XVII Addl. Sessions Court, Chennai, made in S.C. No.213 of 2015.

2. For the sake of convenience, the petitioner and the respondents will be referred to as petitioner and accused.

3. It is the case of the prosecution that on 18.1.14, around 5.30 p.m., the deceased Mari, who was under the influence of alcohol, picked up a quarrel with the accused and demanded the accused to give the key to his house. It is alleged that the accused pushed Mari on account of which Mari fell on the

ground and sustained head injury. Mari was immediately rushed to the hospital by his brother-in-law, Venu (P.W.1). On the statement given by Mari, the respondent police registered a case in crime No.104/14 on 19.1.14 for offence under Sections 294 (b) and 323 IPC against the accused. Mari died on 4.2.14 pursuant to which the FIR was altered to one under Section 302 IPC. After the death of Mari, autopsy was conducted and after completing the investigation, the police filed the final report against the accused for an offence under Section 304 (ii) IPC for having caused the death of Mari.

4. The case was taken on file as PRC No.20/15 by the 18th Metropolitan Magistrate, Saidapet and was committed to the Court of Sessions in S.c. No.213/15 and was made over to the 17th Addl. District & Sessions Judge, Chennai. Charge under Section 304 (ii) IPC was framed against the accused and when questioned, he pleaded not guilty.

5. For proving the case, the prosecution examined 13 witnesses and marked 11 exhibits. When the accused was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing him in the evidence tendered by the prosecution witnesses, he denied the same. No witness was examined on behalf of the accused. After considering the evidence adduced by the prosecution, the trial court, by order dated 10.3.16, in S.C. No.213/15, acquitted the accused aggrieved by which the widow of the deceased Mari has preferred the present appeal against the acquittal with an application for special leave.

6. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the accused and perused the materials available on record.

7. Grant of special leave is not automatic and that there should be prima facie material to show that the trial court had grievously erred in acquitting the accused.

8. Learned counsel for the petitioner took this Court through the evidence of the witnesses, especially that of P.W.1.

9. Per contra, learned counsel for the accused submitted that even according to P.W.1 he had not seen the incident and that he came to the spot only after he was informed by neighbours.

10. This Court gave its anxious consideration to the rival submissions. Before advertng to the materials on record, it would be useful to extract the following passage from the judgment of the Supreme Court in Arulvelu & Anr. -Vs- State (2009 (10) SCC 206) :-

"36.The legal position seems to be well

settled and consistent at least since 1934 when the Privy Council decided the case of Sheo Swarup & Others v. King Emperor AIR 1934 PC 227 in which the Court (per Lord Russell) observed as under:

"..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..."

11. On a reading of the evidence of P.W.1, it is seen that P.W.1 has admitted that he came to the scene of occurrence only after receiving information from his neighbour, Arumugam. The trial court has given a finding that since P.W.1 had come to the spot only after the incident, as admitted by him in the cross-examination, he could not have seen the incident himself. That apart, the trial court has found that the deceased Mari had told P.W.5, Dr.Daniel, who admitted him at Royapettah Government Hospital that he had fallen in his house and had sustained injuries. The doctor's evidence shows that the deceased Mari was in a state of intoxication.

12. Learned counsel for the petitioner submitted that when Mari was in a state of intoxication, the statement of the doctor that he himself had fallen in his house should not be accepted and that the evidence of P.W.1, who is said to have seen the incident of the accused pushing Mari should be accepted.

13. In the considered opinion of this Court, the evidence of P.W.1 shows that he himself came to the spot only after he was informed about the incident by Arumugam, his neighbour. This aspect had weighed in the mind of the trial court, which had seen the demeanour of P.W.1 in the witness box and the trial court had chosen to disbelieve his version.

14. That apart, Dr.Baskaran, the doctor who conducted post-mortem on the body of the deceased Mari has clearly stated that the injury suffered by Mari on the head was not the proximate cause of his death. Admittedly, Mari was admitted in the hospital on 18.1.14 and discharged from the hospital on 25.1.14 and, subsequently, he had died on 4.2.14. All the witnesses have admitted that Mari was in the habit of consuming liquor.

15. In view of such overwhelming evidence, this Court is of the view that there is no perversity in the order of acquittal passed by the trial and the trial Court had acquitted the

accused taking all the above factors into consideration by a well reasoned judgment, which does not warrant interference by this Court. Hence, the Special Leave petition stands dismissed. Connected Crl. A. SR. No.28097 of 2016 is closed.

Sd/-
Assistant Registrar(CS VIII)

//True copy//

Sub Assistant Registrar

GLN

To

- 1.The XVII Additional District Sessions Judge,
Chennai.
- 2.The XVIII Metropolitan Magistrate, Saidapet,
Chennai.
- 3.The Inspector of Police,
E-1, Mylapore Police Station, Chennai-4
- 4.The Public Prosecutor,
High Court, Madras

+1cc to Mr.R.Rajesh Kumar, Advocate SR.No.75192

CRL. O.P. NO.24603 OF 2016
IN
CRL. A. SR. NO. 28097 OF 2016

KJI (CO)
GN(07/12/2017)

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