

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.11.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.A.No.514 of 2012

1.K.Selvakumar
2.G.Kumarasamy
3.K.Manickavelu

... Appellants/
Accused

Vs.

State rep. by
The Inspector of Police,
J-6 Thiruvannamiyur Police Station,
Chennai-104.
(Crime No.963/2006)

... Respondent/
Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the judgment and order dated 18.07.2012 passed by the Sessions Judge (Mahalir Neethimandram), Chennai in S.C.No.17 of 2009.

For Appellants : Mrs.Rita Chandrasekar

For Respondent : Mrs.P.Kritika Kamal,
Govt. Advocate (Crl. Side)

J U D G M E N T

This criminal appeal is directed against the judgment and order of conviction and sentence dated 18.07.2012 passed by the Sessions Judge (Mahalir Neethimandram), Chennai in S.C.No.17 of 2009.

2.The facts in brief giving rise to the filing of this criminal appeal are as under :

2.1.Dr.Geetha (P.W.1) is the sister of Manjula (P.W.2) and Anandhi (P.W.3). She married Selvakumar (A1) on 11.06.1986 and only thereafter, she joined medical college and acquired M.B.B.S. degree. A son was born to them in the year 1994. The couple purchased several properties in and around Chennai, including a property in Thoraipakkam in the year 1997, in which, they are living.

2.2.The subject matter of dispute is, the flat in Sasthri Nagar that was purchased by Dr.Geetha (P.W.1) from her own

funds and by availing loan from L.I.C. Her husband Selvakumar (A1) insisted that his name should also be included in the sale deed and therefore, she was forced to include his name in the sale deed registered as document No.1947 of 2005 dated 21.03.2005. Dr.Geetha (P.W.1) established a clinic in the said flat and was living with her husband in Thoraipakkam property. It is alleged by Dr.Geetha (P.W.1) that she suffered domestic violence at the hands of her husband and in-laws, who were wanting to usurp all the properties.

2.3.During last week of May 2006, a quarrel is said to have ensued between the spouses, in which, Selvakumar (A1) had assaulted the child, therefore, Dr.Geetha (P.W.1) and the child left the matrimonial home and started living with her mother in door No.6, 22nd Cross Street, Indira Nagar, Adyar, Chennai.

2.4.It is the specific case of Dr.Geetha (P.W.1) that on 30.07.2006, Selvakumar (A1), his father Kumarasamy (A2), his sister Leela (A3) and Manickavel (A4), who is the co-brother of Kumarasamy (A2), came to her mother's house around 06.00 p.m. and insisted Dr.Geetha (P.W.1) should release her rights in the Sasthri Nagar property in favour of Selvakumar (A1), for which, she was not agreeable and therefore, they attacked Dr.Geetha (P.W.1), her mother, her sisters Manjula (P.W.2) and Anandhi (P.W.3) indiscriminately and attempted to murder them.

2.5.On these allegations, the police registered a case in Crime No.965 of 2006 on 04.11.2006 under Sections 341, 323, 441, 355, 498-A, 506(ii) and 307 IPC, pursuant to the directions of the learned IX Metropolitan Magistrate, Chennai under Section 156(3) Cr.P.C. and prepared the printed F.I.R. (Ex.P7).

2.6.After completing the investigation, the police filed a final report in P.R.C.No.134 of 2008 before the IX Metropolitan Magistrate, Chennai against the said four persons for the said offences.

3.On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.17 of 2009 and was made over to the Mahila Court, Chennai, for trial. The following charges were framed against the accused by the trial Court on 20.07.2009 :

Selvakumar (A1)	498-A, 441, 323, 307 and 506(ii) IPC
Kumarasamy (A2)	498-A, 441, 323, 325 and 506(ii) IPC
Leela (A3)	441, 323, 355 (2 counts) and 506 (ii) IPC

Selvakumar (A1)	498-A, 441, 323, 307 and 506(ii) IPC
Manickavel (A4)	441, 307 read with 109 and 506(ii) IPC

When questioned, the accused pleaded "not guilty".

4.To prove the case, the prosecution examined 9 witnesses and marked 9 documents. When the accused were questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against them, they denied the same. In the cross-examination of the accused, the letter dated 18.05.1994, that is said to have been written by the father of Dr.Geetha (P.W.1) to Kumarasamy (A2) was marked as Ex.D1. On behalf of the accused, no witness was examined.

5.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 18.07.2012 in S.C.No.17 of 2009, convicted and sentenced the accused as follows :

Rank of the accused	Provision under which convicted	Sentence
Selvakumar (A1)	Section 441 IPC	Fine of Rs.500/-, in default to undergo one month simple imprisonment
	Section 323 IPC	Fine of Rs.1,000/-, in default to undergo two months simple imprisonment
Kumarasamy (A2)	Section 441 IPC	Fine Rs.500/-, in default to undergo one month simple imprisonment
Leela (A3)	Section 441 IPC	Fine Rs.500/-, in default to undergo one month simple imprisonment
Manickavel (A4)	Section 441 IPC	Fine Rs.500/-, in default to undergo one month simple imprisonment

Challenging the aforesaid conviction and sentences, Selvakumar (A1), Kumarasamy (A2) and Manickavel (A4) preferred the present appeal.

6. Heard Mrs. Rita Chandrasekar, learned counsel for the appellants and Mrs. P. Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent State.

7. Mrs. Rita Chandrasekar contended that there are no prima facie materials to sustain the conviction, inasmuch as the entire prosecution has been motivated and engineered by Dr. Geetha (P.W.1) and her family members to wreak vengeance against the appellants. She further contended that Dr. Geetha (P.W.1) and her family members did not go even to the Government Hospital for treatment and they were treated only by a private Physician, who was already known to Dr. Geetha (P.W.1).

8. Per contra, learned Government Advocate (Crl. Side) refuted the contentions.

9. This Court gave its anxious consideration to the rival submissions.

10. Dr. Geetha (P.W.1), in her evidence, has narrated the sequence of events, beginning from her marriage with Selvakumar (A1) up to the incident that took place on 30.07.2006.

11. In the cross-examination, the appellants have not denied their coming to the natal home of Dr. Geetha (P.W.1) on 30.07.2006, but, had only contended that they had come there to amicably settle the matter. Therefore, the short question is, are there materials to hold that the appellants had trespassed into the house of Dr. Geetha (P.W.1), assaulted her and her two sisters viz. Manjula (P.W.2) and Anandhi (P.W.3).

12. In her evidence, Dr. Geetha (P.W.1), has stated that on 30th around 06.30 p.m., the appellants came to her mother's house and asked her to transfer the Sasthri Nagar property, where she is having her clinic, in favour of her husband Selvakumar (A1), for which, she bluntly refused; at that time, her husband twisted her hand and hit her on her hand, left cheek and chest; when her 60 year old mother intervened, Kumarasamy (A2) and Leela (A3) slipped her on her cheeks, due to which, her tooth broke; they also slipped her (Dr. Geetha-P.W.1); Manickavel (A4) broke the handle of a chair and threatened her that he would kill her; when her two sisters came to her rescue, they were also beaten and one of them had suffered injury on her shoulder; her husband called her a bitch and said that if she does not settle the property, he would kill her and her son; when they locked themselves up in the house, the appellants left; thereafter, all the injured went for treatment to Dr. Ramadevi (P.W.4).

13.Though Dr.Geetha's (P.W.1's) mother was not examined as a witness, her two sisters viz. Manjula (P.W.2) and Anandhi (P.W.3) have sufficiently corroborated her evidence. The defence was not able to make any serious dent in the testimony of these witnesses.

14.Dr.Ramadevi (P.W.4), in her evidence, has stated that on 30.07.2006, Sunday around 07.00 p.m., Dr.Geetha (P.W.1), her mother and sisters came to her clinic and told her that they were assaulted by her husband and his family members; she examined each of them and noted that Dr.Geetha's (P.W.1's) mother was bleeding in her mouth and had lost two teeth; Dr.Geetha (P.W.1) complained of pain in the chest and her face was swollen; she had scratches on her hands; her sister complained of pain on her shoulder and on examination, it was found that her shoulder had slipped; she gave treatment to the injured and the treatment records were marked as Exs.P2, P3 and P4.

15.In the cross-examination, it was suggested to Dr.Ramadevi (P.W.4) that she should have treated them as a medicolegal case, for which, she said that Dr.Geetha (P.W.1) told her that it was a matrimonial dispute and that is why, she had not treated them as a medicolegal case. Ultimately, it was suggested to her that, since Geetha (P.W.1) was a doctor, she is falsely deposing, which suggestion, she denied.

16.This Court has no reasons to disbelieve the testimony of Dr.Ramadevi (P.W.4). The parties came to her house around 7'o clock evening, complaining of pain and on examination, she found injuries on all of them and gave them immediate treatment. The explanation given by Dr.Ramadevi (P.W.4), for not treating the case as a medicolegal case, cannot be outrightly rejected in the facts and circumstances of the case. The appellants were compelling Dr.Geetha (P.W.1) to transfer Sasthri Nagar flat, where she was having her clinic in favour of her husband and that being the motive, they had trespassed into the house of her mother, assaulted the inmates and went away. This Court does not find any infirmity in the findings of the trial Court warranting interference.

In the result, this criminal appeal stands dismissed. The Registry is directed to transmit the records to the Court concerned forthwith.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Sessions Judge,
Mahalir Neethimandram,
Chennai.

2.The Inspector of Police,
J-6 Thiruvanmiyur Police Station,
Chennai-104.

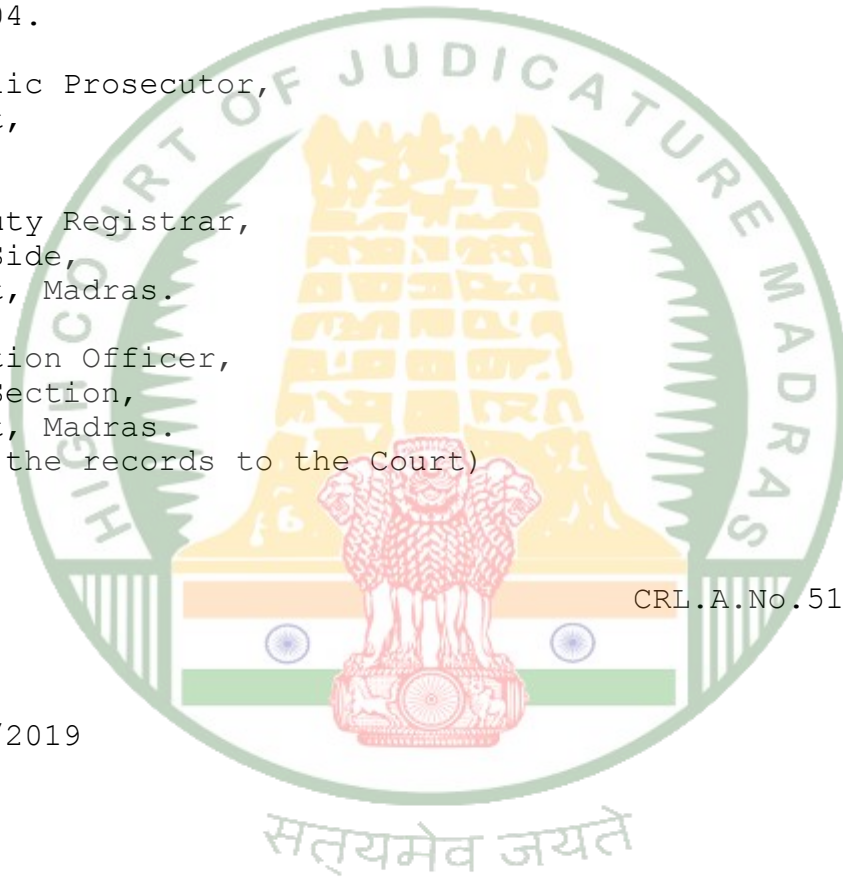
3.The Public Prosecutor,
High Court,
Madras.

4.The Deputy Registrar,
Criminal Side,
High Court, Madras.

5.The Section Officer,
Criminal Section,
High Court, Madras.
(transmit the records to the Court)

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