



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Tuesday, the Fifth day of February Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice P.N.PRAKASH
and
The Hon`ble Mr Justice B.PUGALENDHI

CRL OP(MD) No.4 of 2019
in
CRL.A(MD)No.SR37391 of 2018

1 SYED ALI FATHIMA

... APPELLANT/
DEFACTO COMPLAINANT

Vs

1 SUDHAKAR @ MANI
2 RAJAPANDI
3 MUTHURAMAN
4 MANIKANDA RAJA
5 JANSAN DINESH
6 SERMADURAI

... RESPONDENTS NO.1 TO 6/
ACCUSED NO.3 TO 8

7 STATE REP.BY
THE INSPECTOR OF POLICE
ERUVADI POLICE STATION(CIRCLE),
THIRUKURUNKUDI POLICE STATION,
TIRUNELVELI DISTRICT.
IN CRIME NO.139 OF 2015

... RESPONDENT NO.7/
COMPLAINANT

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to grant special leave to the petitioner for appeal against the acquittal order of the Accused No.3 to 8 of the Judgment passed by the learned IV Additional Sessions Judge, Tirunelveli, Tirunelveli district in S.C.No. 592 of 2016, dated 24.09.2018 in Cr1.OP(MD)No. 4 of 2019 in Cr1.A(MD)SR.No. 37391 of 2018 on the file of this Honourable Court.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.S.A.S.ALADUDEEN, Advocate for the petitioner and of Mr.V.KATHIRVELU, Senior Counsel for R1 to R6 and Mr.R.ANANDHARAJ, Additional Public Prosecutor for R7, the court made the following



[Order of the Court was made by **P.N.PRAKASH, J**]

It is the case of the prosecution that A1 to A8, belonging to BJP, had attacked the deceased Sheik Mohideen on 21.12.2015 around 20.30 hours and caused his death. In connection with the same, the police registered a case in Crime No.139 of 2015 and after completing the investigation, filed a final report against eight accused for the offences under Sections 120(B), 148, 153 (A) (1) (b), 364 and 349, 302 r/w 149 IPC.

2. The case was committed to the Court of Session in S.C.No.592 of 2016 and was made over to the IV Additional Sessions Judge, Tirunelveli, for trial.

3. The trial Court framed the aforesaid charges and when questioned, the accused pleaded not guilty. To prove the case, the prosecution examined 40 witnesses and marked 56 exhibits besides 20 material objects. When the accused were questioned under Section 313 Cr.P.C., about the incriminating circumstances appearing against them, they denied the same. On behalf of the accused, one document was exhibited as Ex.D1. After considering the evidence on record and hearing either side, the trial Court, by judgment dated 24.09.2018 in S.C.No.592 of 2016 convicted A1 and A2, but, however, acquitted A3 to A8. Aggrieved by which, the wife of the deceased has preferred the present appeal against acquittal and is seeking leave.

4. Heard Mr.S.A.S.Alaudeen, learned counsel for the petitioner/appellant.

5. On a perusal of the judgment of the trial Court, it is seen that there is absolutely no iota of material implicating A3 to A8 in the offences. However, the learned counsel for the petitioner/appellant drew the attention of this Court to the evidence of Narayana Selvan/ P.W.5 and Nagoor Meeran Sahib/P.W.6 and submitted that the prosecution has proved that the accused had a very strong motive to eliminate the deceased, because the accused believed that it was the deceased, who had masterminded the assault of A5 in this case. However, on a reading of the evidence of Narayana Selvan/P.W.5, he has stated that he is also an auto driver in the area and a day prior to the incident, Kathirvelsamy/A1 called him to his mobile phone and introduced himself as a friend of Muthuraman/A5. A1 further told P.W.5 that A5 had told him (A1) to approach him (P.W.5) for any help and that he (P.W.5) would do all help. Beyond that there is nothing in the evidence of P.W.5. P.W.5 has not stated that A1 sought his (P.W.5's) help for eliminating the deceased or for committing any other offence. As regards the evidence of P.W.6, in his evidence, he has stated that he is an Auto Driver and A5 is also an Auto Driver known to him; that he knows Kathirvelsamy/A1 and Mahesh/A2; that on 21.02.2015, around 7.00 to 7.30 a.m., in the evening, he saw A1 and A2 together and thereafter, they followed the Auto rickshaw of the deceased. Here also, there is



no whisper about the involvement of the acquitted accused for this Court to even draw an inference about their involvement in the conspiracy with A1 and A2 to attack the deceased.

6. Leave to appeal is not a matter of right and the same can be granted only when there are prima facie materials to show that there has been a misappreciation of evidence by the trial Court. In the absence of any such material, this is not a fit case to grant leave to appeal against the acquittal of A3 to A8. Hence, this Criminal Original Petition is dismissed.

sd/-

05/02/2019

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE IV ADDITIONAL SESSIONS JUDGE,
TIRUNELVELI, TIRUNELVELI DISTRICT.

2 THE INSPECTOR OF POLICE
ERUVADI POLICE STATION(CIRCLE),
THIRUKURUNKUDI POLICE STATION,
TIRUNELVELI DISTRICT.

3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. CC to Mr.S.A.S.ALADUDEEN Advocate SR.No.45094

ORDER

IN

CRL OP(MD) No.4 of 2019 and

CRL.A(MD)No.SR37391 of 2018

Date :05/02/2019

MS/VR/SAR-3/27.03.2019/3P.5C