



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 23.04.2019

CORAM

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THE HONOURABLE MR. JUSTICE P.N.PRAKASH  
AND  
THE HONOURABLE MR. JUSTICE B.PUGALENDHI

CRL. O.P. (MD) NO.5403 OF 2019  
IN  
CRL. A. (MD) SR NO. 40417 OF 2018

M.Murugan

.. Petitioner/Appellant

- Vs -

1. The State of Tamil Nadu  
rep. By the Inspector of Police  
Silaiman Police Station  
Madurai District.

2. M.Vignesh  
3. P.Vinith  
4. S.Prabhu  
5. R.Lingeshwaran  
6. R.Muthumani  
7. C.Bala Vignesh  
8. M.Karthik Raja @ Rajini

.. Respondents

Petition filed under Section 378 (4) Cr.P.C. praying this Court to grant leave to file appeal against the judgment in Criminal Appeal in S.C. No.91 of 2017 on the file of the learned III Addl. District & Sessions Judge, Madurai, dated 16.3.2018 in Cr. No.470 of 2017 on the file of the respondent police.

For Petitioner : Mr. T.Lajapathi Roy  
For Respondents : Mr. M.Chandrasekaran, APP for R-1  
Mr. M.Jagadeesh Pandian for RR-2 to 8

ORDER

(DELIVERED BY P.N.PRAKASH, J.)

This petition has been filed by the defacto complainant praying this Court to grant leave to the defacto complainant to file the appeal against the acquittal of respondents 2 to 8.

2. Appeal has been preferred by the defacto complainant challenging judgment and order of acquittal of the accused/respondents 2 to 8 herein, passed by the learned 3<sup>rd</sup> Addl.



District & Sessions Judge, Madurai, in S.C. No.91/17 dated 16.3.2018. It may be pertinent to state here that the appeal was filed with a delay of 204 days, which was condoned by the Court in CrI. M.P. (MD) No.1925/19 on 2.4.19 after which the present special leave application has been numbered.

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3. It is the case of the prosecution that the deceased Karthikraja was the son of Murugan (P.W.1); the deceased Karthikraja had gone for his morning ablutions to the Vaigai river side around 6.30 a.m.; while he was on nature's call, it is alleged that A-1 to A-7, on account of previous enmity, armed with deadly weapons, fell upon him and belaboured him resulting in his death. On the complaint given by Murugan (P.W.1), the police registered a case in Crime No.470/2017 on 17.8.17 and after completing the investigation filed the final report before the jurisdictional Magistrate and the case was committed to the Court of Session in S.C. No.91/17 for trial. Since the deceased belonged to Scheduled Caste, the provisions of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act were also invoked.

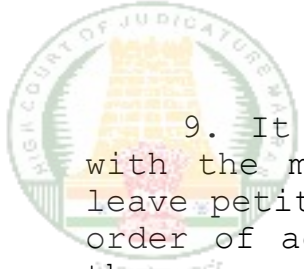
4. The trial court framed charges u/s 147, 148, 302 and 506 (ii) r/w 120 (b) IPC and u/s 3 (1) (r), 3 (1) (s) and 3 (2) (v) of the SC/ST Act. On the accused pleading not guilty, the prosecution examined 19 witnesses, marked 41 exhibits and 12 material objects. On the side of the accused, one witness was examined and three exhibits were marked. After considering the evidence on record, the trial court has acquitted the accused by the impugned judgment, challenging which the defacto complainant is before this Court.

5. Heard Mr.Lajapathi Roy, learned counsel appearing for the defacto complainant, Mr.M.Chandrasekaran, learned Addl. Public Prosecutor appearing for the 1<sup>st</sup> respondent and Mr.Jagadeesh Pandian, learned counsel appearing for the accused.

6. Mr.Lajapathi Roy, learned counsel for the defacto complainant contended that the trial court had fallen into great error by improperly appreciating the eye witness account of P.W.s 2, 3 and 4 and, therefore, the order suffers from manifest illegality and perversity warranting interference by this Court.

7. Per contra, Mr.Jagadeesh Pandian, learned counsel appearing for the accused placed strong reliance upon the judgment of the Supreme Court in **Sejappa - Vs - State of Karnataka (2016 (12) SCC 150)**, where the Supreme Court has laid down the contours within which power is exercisable by this Court in an appeal against acquittal.

8. This Court gave its anxious consideration to the rival submissions advanced by the learned counsel on either side and also perused the materials available on record.

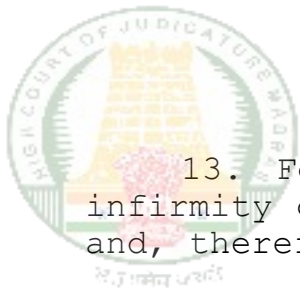


9. It may be necessary to state here that we are not dealing with the main appeal since we are now concerned with the special leave petition. It is trite that special leave to appeal against an order of acquittal is not automatic and only when it is shown that there are prima facie materials to show that the findings are perverse, can special leave be granted. Therefore, this Court perused the evidence of the witnesses and the findings of the trial court.

10. It is the specific case of the prosecution that while the deceased was attending to the nature's call in the banks of the Vaigai river, the attack had taken place and that it was witnessed by P.W.s 2, 3 and 4. The evidence of P.W.s 2, 3 and 4 are indeed parrot-like and each corroborate the other even in minute particulars with regard to the individual overt acts of each of the accused and the injury caused by each of them on the deceased. However, it is seen from the evidence of Murugan (P.W.1) that while he was on his way to work, he was informed by P.W.2 about the attack on Karthikraja and coming to know of it, he went along with the others, including P.W.s 2, 3 and 4 to the river bed and saw the body lying there. He has further deposed that the police came to the place of occurrence and the body was despatched to the Rajaji Government Hospital. P.W.s 2, 3 and 4 have further stated that they had also accompanied the dead body of Karthikraja to the hospital. However, it is seen from the evidence of P.W.8 (Dr.Jayakumar) that the body of Karthikraja was brought to the hospital at 9.15 a.m. by Antony Immanuel, Head Constable No.1490 along with a requisition, Ex.D-3. In Ex.D-3, it is clearly stated that the body of Karthikraja was found near the banks of the Vaigai river and that he has been attacked by identifiable, but unknown persons. Whereas it is the specific case of P.W.s 2 to 4 that they knew all the accused very well as the accused also belong to the same village. Curiously, the Head Constable No.1490, viz., Antony Immanuel, was not examined by the prosecution.

11. Yet another cardinal aspect in this case is that the complaint itself was lodged only at 1100 hours on 17.8.17, wherein the names of six accused figure. Further, in the original complaint, only the names of six accused have been shown, whereas in the final report, 7<sup>th</sup> accused has been added. That apart, it is seen that the name of the A-2 was not mentioned in the FIR and the 4<sup>th</sup> accused was named as Muneeswaran, but in the final report, the name has been shown as Lingeswaran. Towards the above discrepancy, there is no explanation put forth by the prosecution. Thus, Ex.D-3 falsifies the testimonies of P.W.s 2 to 4 that they had witnessed the attack and after the attack they accompanied the body to the hospital.

12. Considering all the above aspects, the trial court was right in coming to the conclusion that the FIR was prepared to implicate the accused herein as otherwise in Ex.D-3, the police would not have averred that Karthikraja was attacked by unknown persons.



13. For all the reasons aforementioned, we do not find any infirmity or perversity in the findings recorded by the trial court and, therefore, no case has been made out for grant of leave.

14. In the result, this criminal original petition, which has been filed to grant leave to the petitioner to file the appeal stands rejected.

Sd/-  
Assistant Registrar (CS-II)

/TRUE COPY/

Sub Assistant Registrar

To

1 THE III ADDITIONAL DISTRICT & SESSIONS JUDGE,  
MADURAI.

2 THE INSPECTOR OF POLICE,  
SILAIMAN POLICE STATION,  
MADURAI.

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

+1 CC to M/s.M.JEGADEESH PANDYAN, Advocate ( SR-61892[F] dated  
23/04/2019 )

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JM/29.07.2019/4P-5C