

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Fifteenth day of November Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice M. SATHYANARAYANAN

and

The Hon`ble Mr Justice N. SESHASAYEE

CRIMINAL MISCELLANEOUS PETITION No.11611 of 2017

IN CRL A.588/2017

1 THIRUMURUGAN
2 MANIVANNAN

[PETITIONERS/APPELLANTS/ACCUSED]

Vs

STATE REP. BY
THE INSPECTOR OF POLICE,
KUMARAPALAYAM POLICE STATION,
CR.NO.23 OF 2015.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal APPEAL No.588 OF 2017 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioners in judgement dt. 11.08.2017 made in S.C.No.22 of 2016 on the file of the learned Additional District Sessions Judge, Namakkal and release the petitioner on bail pending disposal of the Crl.A.No.588 of 2017.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.588 of 2017 on the file of the High Court and upon hearing the arguments of M/S.PITTY PARTHASARATHY, Advocate for the petitioner and of MR. R.RAVICHANDRAN, Govt. Advocate (Crl. Side) on behalf of the Respondent the court made the following order:-

The petitioners / appellants are arrayed as Accused Nos.1 and 2 in SC.No.22/2016 on the file of the Court of the Additional District and Sessions Judge, Namakkal. They have been convicted and sentenced by the Trial Court vide impugned judgment dated 11.08.2017, for the commission of the offences u/s.449 and 302 IPC and were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.1000/- each and in default, to undergo six months rigorous imprisonment for each of the offences. The Trial Court ordered the sentences to run concurrently and also granted set-off under section 428 Cr.P.C. Aggrieved by the above conviction and sentence, the appellants have preferred the present appeal and pending appeal, they have moved the present miscellaneous petition seeking suspension of their sentences.

2 The learned counsel for the petitioners / appellants [A1 and A2] would submit that the petitioners / appellants are the sons of the junior father / uncle of the deceased and the motive for the commission of the offence was that the deceased had attacked the father of the petitioners / appellants [A1 and A2], viz., Chandran, and thereafter, it was compromised and further that the deceased was employed under the petitioners / appellants and the wage for doing the work has not been paid by the petitioners / appellants. It is the further submission of the learned counsel for the petitioners / appellants that the case of the prosecution is that on 16.01.2015, in order to remember the elders who had passed away, a ceremony was organised and P.W.1-wife of the deceased and the family members of the accused went to Katheri and the sister of P.W.1, viz., P.W.3-Suseela, did not come on the ground that she was not given new cloth and in order to pacify her, the deceased - husband of P.W.1 went to the aunt's house of P.W.3, viz., P.W.6, and brought her to his home and was sitting and at that time, at about 2.00 p.m., on 16.01.2015, A1 had trespassed into the house of P.W.2 and uttered the words that "if only he is alive, he is doing like that" and so saying, attacked the deceased with a stick on his head and A2 took the same stick and attacked him on his head and Kumar @ Nallakumar / deceased - husband of P.W.1 sustained injury and he was admitted in the hospital on the said day and without responding to the treatment, he died on 21.01.2015. It is the primordial submission of the learned counsel for the petitioners / appellants that P.W.3-sister of P.W.1 and sister-in-law of the deceased was the sole eyewitness and she was a minor at the relevant point of time and even at the time of giving evidence, she was aged about 16 years and she has improved very much during the course of testimony from that of her statement recorded during the course of investigation. The contradiction elicited through the testimony of P.W.3 was also put to the Investigating Officer - P.W.16.

3 It is the further submission of the learned counsel for the petitioners / appellants that admittedly, the occurrence took place on 16.01.2015 and according to the evidence of P.W.1, on the next day, the police came and two days thereafter, she has given the second complaint and admittedly, Ex.P.1-complaint was given on 19.01.2015 and there is a delay in lodging the complaint and the same has not been properly explained and that apart, the earliest complaint given by P.W.1 has been suppressed and would further add that since the petitioners / appellants are having bright chance of success in the appeal, the substantive sentence of imprisonment imposed on them, may be suspended.

4 *Per contra*, Mr.R.Ravichandran, learned Government Advocate [Crl. Side] appearing for the State would submit that the motive aspect has been proved through the testimonies of P.Ws.1 and 2 and P.W.3-the eyewitness has cogently spoken about the overt act on the part of the petitioners / appellants and though some contradictions were elicited, those are trivial and minor in nature and it had not shaken the foundation laid by the prosecution and the Trial Court, on a proper consideration and appreciation of the oral and documentary evidences, has rightly reached the conclusion and convicted and

sentenced the petitioners / appellants and would further submit that the points urged by the learned counsel for the petitioners / appellants revolve around on the merits of the appeal and hence, prays for dismissal of this petition.

5 The Court has considered the rival submissions and also perused the materials placed before it.

6 A perusal of the materials placed before this Court in the form of oral and documentary evidences of the prosecution witnesses, would indicate that the complaint came to be lodged three days from the date of occurrence and it is the testimony of P.W.1 that the police came to the spot on the very next day on 17.01.2015 and on 19.01.2015, she had lodged the second complaint. Therefore, the delay in lodging the complaint has not been properly explained and it also appears that the fate of the first complaint given by P.W.1 is also not known. P.W.3 is the sole eyewitness to the occurrence and a contradiction was elicited as to the material portion and in the cross-examination, she would depose that during the course of investigation, she did not state that her uncle - deceased castigated her and dragged her and also did not state that she was sitting on the entrance to the house as well as sitting of her uncle -d on the chair. The contradiction elicited in the cross-examination of P.W.3 was put to the Investigating Officer-P.W.16 and he would depose that P.W.3, during the course of evidence has stated that on the date of occurrence, at about 2.00 p.m., the deceased under the influence of alcohol, had a quarrel with her ; but in the statement recorded u/s.161[3] Cr.P.C., she did state so. P.W.16 would further depose that since her uncle / deceased scolded her and attempted her to beat her, she went to the house of her relative, viz., Saroja [P.W.6] and from the house of P.W.6, her uncle had scolded her and took her back and however, in her statement, she did not state that she was sitting along with her uncle - deceased and that he was attacked by the petitioners / appellants by the use of a stick. Thus, this Court is *prima facie* of the view that there is a material improvement made by P.W.3 in the course of her oral evidence from that of her statement recorded u/s.161[3] Cr.P.C. during investigation. P.W.1, in the cross-examination hs stated that when she saw her husband lying upside down, a Bero/Wardrobe was found nearby and it was in a dented condition. P.W.5-Govindaraj and his wife Saroja - P.W.6 have turned hostile.

7 This Court, for the foregoing reasons, is of the view that the sentences of imprisonment imposed on the petitioners / appellants is to be suspended.

8 In the result, the petition is ordered and the substantive sentences of imprisonment alone in respect of the petitioners herein, are suspended and the petitioners are directed to be enlarged on bail on condition that each of the petitioners shall execute a bond for a sum of Rs.10,000/- [Rupees ten thousand only] with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate,

Tiruchengode and on further condition that the petitioners shall appear before the said Court on the first working day of every English Calendar Month at 10.30 a.m. until further orders.

-sd/-
15/11/2017

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE JUDICIAL MAGISTRATE,
TIRUCHENGODE.

2 THE CHIEF JUDICIAL MAGISTRATE
NAMAKKAL. [FOR INFORMATION]

3 THE ADDL. DISTRICT SESSIONS
JUDGE, NAMAKKAL.

4 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 STATE REP. BY
THE INSPECTOR OF POLICE,
KUMARAPALAYAM POLICE STATION,

+1 C.C. to M/S.PITTY PARTHASARATHY Advocate on payment of
necessary charges -Sr.20959

Order

in
CRL MP.11611/2017

in
CRL A.588/2017

Date :15/11/2017

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