

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Ninth 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.12961 of 2017

IN CRL A.652/2017

1 MANIMEKALA @ MANIMEGALAI, [PETITIONERS]
2 GIRIJA @ KRISHNA KUMARI,
3 THUKKACHI @ THUKKAIYAMMAL

Vs

THE INSPECTOR OF POLICE, [RESPONDENT]
SOORAMANGALAM POLICE STATION,
CR.NO. 587 OF 2012.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.652/2017 on the file of the High Court, the High Court will be pleased to suspend the sentence of Imprisonment imposed against the petitioners/Appellants 3 to 5 in the Judgement dated 14.09.2017 in Sessions Case No.161 of 2013 file of the IInd Additional District and Sessions Judge, Salem.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.652/2017 on the file of the High Court and upon hearing the arguments of M/S.S.KALYANARAMAN Advocate for the petitioner and of MR.R.RAVICHANDRAN, Govt. Advocate (Crl. Side) on behalf of the Respondent the court made the following order:-

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The petitioners are arrayed as Accused Nos.4 to 6 in SC.No.161/2013 on the file of the Court of the II Additional District and Sessions Judge, Salem. They have been convicted and sentenced vide impugned judgment dated 14.09.2017, as follows:-

Rank of the accused	Conviction under section	Sentence Awarded
A4 to A6	147 IPC	Each of the accused were sentenced to undergo one year rigorous imprisonment.
	341 IPC	Each of the accused were sentenced to undergo one month simple imprisonment.
	302 read with 149 IPC	Each of the accused were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.1,000/- each and in default, to undergo six months simple imprisonment.

The Trial Court ordered the sentences to run concurrently and also granted set-off under section 428 Cr.P.C.

2 The accused 1 and 2 were also found guilty of committing offences u/s.148, 341 and 302 IPC and imposed with the sentences of imprisonment and fine accordingly.

3 One of the accused, viz., Tamizharasan, was a juvenile and therefore, the case was ordered to be split up and transferred to the Juvenile Justice Board for disposal and it is informed that the trial is not yet over.

4 The case of the prosecution is that the deceased Karthik is the sister's son of P.W.1. On 21.09.2012, at about 7.00 p.m., when P.W.1 and one Pradeep, were sitting near Ellaikaliyamman Temple and chatting, the deceased Karthik, after finishing his work, was returning to his house and A1-Kuttimani @ Anbarasu was standing in front of his house and he was teased by the deceased Karthik and there was a wordy altercation and A1 and A2 began to assault the deceased and P.W.1 and Pradeep intervened and pacified and on the same day, at about 10.30 p.m., P.W.1 and his family members were watching TV in their house and they heard the noise outside and they came out and saw A1 to A3 and the said Tamizharasan [juvenile] attacking the deceased Karthik with wooden logs in front of the house of A1 and the petitioners/A4 to A6, caught hold of Karthik. A2 and A3 caused the fatal overt act and as a result of which, he died.

5 The Trial Court, on consideration and appreciation of the oral and documentary evidences, found that the accused 4 to 6 / petitioners herein were also guilty and convicted and imposed the sentences as stated above.

6 The learned counsel for the petitioners / appellant [A4 to

A6] would submit that the version of the prosecution is unbelievable and also improbable for the reason that there was disconnection of power supply and P.W.1, at the earliest point of time, did not state anything about the place of occurrence and would further point out that even assuming without admitting the case projected by the prosecution against the accused is true, even as per the version of the prosecution, the deceased was attacked by three accused and therefore, there was no necessity on the part of these petitioners/A4 to A6, who are women-folk to catch hold of the deceased from preventing him from escaping and also add that the petitioners/A4 to A6 are having a bright chance of success in this appeal and hence, prays for suspension of their sentences of imprisonment.

7 *Per contra*, Mr.R.Ravichandran, learned Government Advocate [Crl.Side] would submit that P.Ws.1 to 4 are the eyewitnesses to the occurrence and their testimonies are cogent and corroborate with each other on material particulars and the scientific evidence has also sustained the case of the prosecution that the deceased died on account of the homicidal violence and would further add that the points urged by the learned counsel for the petitioners/A4 to A6/appellants can be tested only during the final arguments to be advanced in this appeal and prays for dismissal of this miscellaneous petition.

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

9 No doubt, P.Ws.1 to 4 had supported the case of the prosecution as to the overt act on the part of the petitioners / appellants [A4 to A6]. It is also pointed out by the learned Government Advocate [Crl.Side] that the deceased was assaulted by A1 to A3 and A1 had caused the fatal overt act by stabbing the deceased with M.O.2 - "Fj;J[]rp" on the abdomen and the Postmortem Report marked as Ex.P.11 coupled with the testimony of P.W.7 would disclose that the deceased had died on account of the said injury. It is also the case of the prosecution that the petitioners / appellants [A4 to A6] along with the Juvenile accused Tamizharasan, had caught hold of the deceased Karthik.

10 It *prima facie* appears that the motive for the commission of the murder was the instigation on the part of the deceased on the date of the commission of the offence on the evening hours and it also appears that the catch holding of the deceased by these petitioners is not an intentional one and admittedly, they have not been attributed with any fatal overt act. It is also submitted that the fine amounts have already been paid.

11 This Court, taking into consideration of the fact that the petitioners are ladies and further considering the fact that they have no bad antecedents and they were also on bail throughout the trial, is inclined to suspend their substantive sentences.

12 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 No.2, Salem 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.

13 The Registry is also directed to prepare the typed set of documents and expedite the final hearing of this appeal.

-sd/-

09/11/2017

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,
NO.2, SALEM

2 THE CHIEF JUDICIAL MAGISTRATE
SALEM[FOR INFORMATION]

3 THE II ADDITIONAL DISTRICT AND
SESSIONS JUDGE, SALEM

4 THE INSPECTOR OF POLICE,
SOORAMANGALAM P.S.,

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS

6 THE SUPERINTENDENT
CENTRAL PRISON, VELLORE

7 THE SECTION OFFICER,
CRIMINAL SECTION, HIGH COURT, MADRAS

1 C.C. to M/S.S.KALYANARAMAN Advocate on payment of necessary charges SR.NO. 20657

Order

in
CRL MP.12961/2017

in
CRL A.652/2017
Date :09/11/2017

From 7.2.2001 the Registry is issuing certified copies of the BAIL/Anti.BAIL Orders in this format
RD 20/11/2017