

IN THE HIGH COURT OF JUDICATURE AT MADRAS

( Criminal Jurisdiction )

Wednesday, the Ninth day of August Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice S. MANIKUMAR

and

The Hon`ble Mrs Justice V.BHAVANI SUBBAROYAN

CRIMINAL MISCELLANEOUS PETITION No.9244 of 2017

IN CRL A.442/2017

SELVARAJ,

[ PETITIONER/APPELLANT]

Vs

THE STATE REP BY ITS,  
THE INSPECTOR OF POLICE,  
THIRUPUR RURAL POLICE STATION,  
THIRUPUR DISTRICT  
CR.NO.117 OF 2012.

[ RESPONDENT ]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal APPEAL No.442 OF 2017 on the file of the High Court, the High Court will be pleased to suspension of sentence of life imprisonment and fine of Rs.500/- passed by the the learned II Additional Sessions and District Judge, Thiruppur in S.C.No.230 of 2012 dated 28.09.2012 and to enlarge the petitioner on bail pending disposal of the above CRL.A.NO.442/2017.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.442 of 2017 on the file of the High Court and upon hearing the arguments of MR.A.VEERAMARTHINI, Advocate for the petitioner and of MR. J.KARUPPIAH, ADDL. PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

(Order of the Court was made by S.Manikumar,J)

The petitioner/appellant has been found guilty of offence under Section 302 of the Indian Penal Code and sentenced to undergo life imprisonment and to pay a fine of Rs.500/-, in default to undergo three years rigorous imprisonment, has filed the instant appeal, challenging conviction and sentence, on the grounds that

(i). Ex.P.9 AIR copy, was not marked through Dr.Lakshmi Shanthi, who examined the deceased.

(ii). P.Ws.3 and 4, have deposed that the appellant punched the deceased on her chest. P.W.7 Post-mortem Doctor deposed that there

is no external injury on the body of the deceased and the death had caused due to bleeding from varicose vein.

2. Petitioner/appellant has filed the present petition, under Section 389 (1) of the Code of Criminal Procedure, seeking suspension of sentence imposed on him by the learned II Additional Sessions and District Judge, Thiruppur, in S.C.No.230 of 2012, on 28/9/2012.

3. Contending inter alia that when prosecution has not adduced any legal evidence, to prove that the act by which death was caused was done, with an intention of causing death and therefore, the offence under Section 300 of the Indian Penal Code, is not attracted and that the trial Court has grossly erred in convicting and sentencing the appellant to life imprisonment and with fine of Rs.500/-.

4. We have heard Mr.J.Karuppiah, Additional Public Prosecutor, who submitted that prosecution has proved the case and further contended that the appellant has not made out any case for suspension of sentence.

5. Heard the learned counsel for both parties and perused the materials available on record.

6. Section 300 of the Indian Penal Code reads that except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death.

7. Perusal of the impugned judgment shows that aunt of P.W.1 Lakshmi, was a heart-patient. According to the prosecution, P.W.1's father punched Lakshmi, on her chest and she was found lying, in front of Krishna's house. She was taken to Tirupur Hospital by 5.30 p.m., and despite treatment, Lakshmi died at 11.00 a.m., next day. Though prosecution has alleged that knowing fully well that the deceased was a heart-patient, the appellant punched her on the chest, the vital aspect of the matter bringing the prosecution case within the ambit of Section 300 of the Indian Penal Code, murder, i.e., an act by which the death was caused, was done with an intention of causing death is totally lacking, and that there is no foundation for the charge under Section 302 of the Indian Penal Code. Going through the impugned judgment, we do not find that the prosecution has adduced any iota of evidence, in that direction.

8. Ms.A.Veeramarthini, learned counsel for the appellant submitted that ever since the date of conviction i.e., 28/12/2012, the petitioner/appellant is incarcerated for nearly five years.

9. From the submissions made on behalf of the petitioner/appellant and in view of the various grounds raised in the memorandum of criminal appeal, this Court find that there are substantial and arguable points in the present case. Further, it is also seen that if certain stringent conditions are imposed, there is no chance for the accused to abscond. Further, it is seen that

various points raised in the grounds of appeal require examination. Hence, this Court, to prevent an aberration of justice, suspends the substantial sentence of imprisonment alone, pending disposal of the above criminal appeal, with the following conditions:-

(i). The petitioner/appellant shall be released on bail, on executing a bond for a sum of Rs.10,000/- (Rupees Ten thousand only), with two sureties, each for a likesum to the satisfaction of the learned II Additional Sessions and District Judge, Thirupur;

(ii). the petitioner/appellant shall appear before the said Court, daily on all working days, at 10.30 a.m., until further orders, failing which the said Court is directed to inform about the details of failure committed by the petitioner/appellant in complying with the said conditions, to the Registry of this Court forthwith;

(iii). the petitioner/appellant shall furnish his full details of their residential address and also phone numbers (mobile/landline), if any, to the said Court, in the form of an affidavit, after serving an advance true copy of the same, to the respondent Police; and

(iv). on receipt of the true copy of the said affidavit, the respondent Police is directed to verify the veracity of the particulars given in the said affidavit and also liberty is granted to the respondent to take appropriate follow up action, in accordance with law.

-sd/-

09/08/2017

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 II, ADDL. SESSIONS AND  
DISTRICT JUDGE, THIRUPUR.

2 THE PRINCIPAL SESSIONS JUDGE,  
THIRUPUR. [FOR INFORMATION]

3 THE PUBLIC PROSECUTOR  
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,  
THIRUPUR RURAL POLICE STATION,  
THIRUPUR DISTRICT

5 THE SUPERINTENDENT  
CENTRAL PRISON, COIMBATORE.

+1 C.C. to M/S.A.VEERAMARTHINI Advocate on payment of necessary  
charges-Sr.15148

Order

in  
CRL MP.9244/2017

in  
CRL A.442/2017

Date :09/08/2017

From 7.2.2001 the Registry is issuing certified  
copies of the BAIL/Anti.BAIL Orders in this format  
ths : 09.08.2017