

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Fourth day of February Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M. SATHYANARAYANAN

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.957 of 2019

in CRL.A.NO.847/2018

1 MAHENDRAN
2 SUMATHI

[PETITIONERS/APPELLANTS/ACCUSED]

Vs

THE INSPECTOR OF POLICE
OMALUR POLICE STATION,
SALEM DISTRICT.
CR.NO.642 OF 2013

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal APPEAL No.847 OF 2018 on the file of the High Court, the High Court will be pleased to suspend the conviction and sentence imposed on the petitioners through judgment dated 22.11.2018 in S.C No.64 of 2015 by the learned III Additional District and Sessions Judge, Salem and release them on bail pending disposal of the above C.A.No.847/2018 pending on the file of this Hon'ble High Court.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.847 of 2018 on the file of the High Court and upon hearing the arguments of M/S.S.JEYAKUMAR, Advocate for the petitioner and of MR. C.IYYAPPARAJ, ADDL. PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

(Order of the Court was made by **M.Sathyananarayanan, J.**)

The petitioner/appellants are the accused 1 and 2 in S.C.No.64 of 2015 on the file of the learned III Additional District and Sessions Judge, Salem and they stood charged, tried, convicted and sentenced, vide impugned judgment dated 22.11.2018 as follows:

Accused No.	Convicted for the offence under Section	Sentence imposed by the Trial Court
A1	302 I.P.C.	Life Imprisonment and to pay a Fine of Rs.1,000/- in default, 6 months Simple Imprisonment
A2	294 (b) I.P.C.	To pay a Fine of Rs.250/- in default, 1 month Simple Imprisonment
	302 r/w. 109 I.P.C.	Life Imprisonment and to pay a fine of Rs.1,000/- in default, 6 months Simple Imprisonment.

The Trial Court, while ordering sentence of imprisonment, has granted set off under Section 428 CrPC for the period of incarceration already undergone by the appellants/petitioners.

2. The case of the prosecution is that on 01.09.2013, A1 demanded money from his younger brother, namely Gunasekaran for consuming liquor and it was refused and thereby, resulted in wordy altercation. On the same day at about 5.30 p.m., A1 and his aunt/A2 came to the house of Gunasekaran and started questioning him and both of them decided to do away the life of Gunasekaran. A1, at the instigation of A2, armed with M.O.1-wooden log, attacked him on his head and A2 also abused him and as a result of the said attack, Gunasekaran sustained grievous injuries on his head. The injured was taken to the Government Medical College Hospital, Salem, but without responding to treatment, he died at 9.00 a.m. on the next day viz., 02.09.2013. Ex.P1/complaint was lodged by PW1 to PW11- Inspector of Police, Yercadu, based on which, he registered a case in Crime No.642/2013 for the offences under Sections 294(b), 341 and 302 I.P.C. The Printed F.I.R was marked as Ex.P11.

3. The prosecution, in order to sustain it's case, examined PWs.1 to 3, marked Exs.P1 to P16 and also marked M.Os.1 to 3. Both the accused were questioned under Section 313 CrPC with regard to incriminating circumstances made out against them in the evidence let in by the prosecution and they did not let in any oral or documentary evidence. The Trial Court, on consideration of oral and documentary evidence and other materials, convicted and sentenced the accused as stated above, vide impugned judgment dated 22.11.2018. Challenging the same, the present appeal is filed and pendency of the appeal, prays for suspension of sentence by filing this miscellaneous petition.

4. Mr.S.Jeyakumar, learned counsel appearing for the petitioners/appellants would submit that though the occurrence took place at about 5.30 p.m. on 01.09.2013, the complaint was lodged at about 10.30 a.m. on the next day and though the

prosecution cited PWs.1, 2, 12 and 13 as eyewitnesses to the occurrence, PW12 has turned hostile and rest of the eyewitnesses are closely related to the accused/interested witnesses and though the occurrence was witnessed by very many persons, the prosecution has examined very few witnesses and as such, the conviction and sentence cannot be sustained. The learned counsel appearing for the petitioners would further submit that as per the evidence of PW1, in the Accident Register/Ex.P6, the time of occurrence was mentioned as 3.00 p.m. and whereas according to the prosecution, it was around 5.30 p.m. on 01.09.2013 and there is discrepancy as to the exact time on which the occurrence took place and insofar as A2 is concerned, except the fact that she instigated A1 to commit the offence and said to have caught hold of the deceased, no other evidence is available to connect A2 with the commission of the offence and would further urge that in the light of the infirmities pointed out in the prosecution case, at least benefit of doubt should enure in favour of the accused and they have bright chance of succeeding in the appeal and therefore, prays for suspension of substantive sentence of imprisonment.

5. *Per contra*, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the respondent/State would submit that the evidence of the eyewitnesses viz., PWs.1, 2, 12 and 13 corroborate with each other on material particulars and the scientific evidence on the part of the prosecution also sustain it's case that it is a case of homicidal violence and the Trial Court, on proper appreciation of oral and documentary evidence, has rightly reached the conclusion to convict and sentence both the accused and prays for dismissal of this petition.

6. This Court has considered the rival submissions and also perused the materials placed before it.

7. Insofar as the discrepancy as to the time of commission of the offence, it is about two hours and it is to be remembered at this juncture that the occurrence took place on 01.09.2013 and the witnesses were examined nearly after 3 years and the delay in examining the witnesses pointed out by the learned counsel appearing for the petitioners/appellants may not be significant and even otherwise, it can be appreciated during the course of trial, after perusal and consideration of oral and documentary evidence. As regards the delay in lodging the F.I.R., the prosecution examined PWs.1, 2, 12 and 13 as eyewitnesses to the occurrence and out of which, only PWs.1, 2, 13 supported the case of the prosecution and PW12 has turned hostile and however, this Court is not inclined to consider the said discrepancy at this stage.

8. Insofar as A2 is concerned, who is the aunt of A1, even as per the case of the prosecution, there is no vital overt act attributed against her and she only instigated A1 to commit the offence and said to have caught hold of the deceased. It is also brought to the knowledge of this Court that A2, after remand, was enlarged on bail and she was arrested after passing of the impugned judgment dated 22.11.2018 and she is in custody for nearly 3 months.

9. This Court, in the light of the above facts and circumstances, is not inclined to consider the plea made as regards A1 and however, is of the considered view that the substantive sentence of imprisonment passed against A2 alone can be suspended subject to certain conditions, pending disposal of the appeal.

10. In the result, this Court is not inclined to suspend the substantive sentence of imprisonment imposed on A1 and however, the substantive sentence of imprisonment imposed on A2 alone is suspended pending disposal of the appeal, subject to the following conditions:

(i) The 2nd petitioner/2nd appellant/A2 is directed to be enlarged on bail on condition that she 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 District Munsif cum Judicial Magistrate, Omalur; and

(ii) The 2nd petitioner/2nd appellant/A2 shall appear before the said Court on the first working day of every English Calendar month at 10.30 a.m. until further orders.

11. This Miscellaneous Petition is ordered in respect of 2nd petitioner only and as regards the 1st petitioner, stands dismissed.

-sd/-

04/02/2019

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 DISTRICT MUNSIF CUM
JUDICIAL MAGISTATE, OMALUR.

2 THE CHIEF JUDICIAL MAGISTRATE
SALEM. [FOR INFORMATION]

3 THE III, ADDITIONAL DISTRICT
AND SESSIONS JUDGE, SALEM.

4 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

<https://hcservices.ecourts.gov.in/hcservices/>

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5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE
OMALUR POLICE STATION,
SALEM DISTRICT.

+1 C.C. to M/S.S.JEYAKUMAR Advocate on payment of necessary
charges-Sr.2553

Order

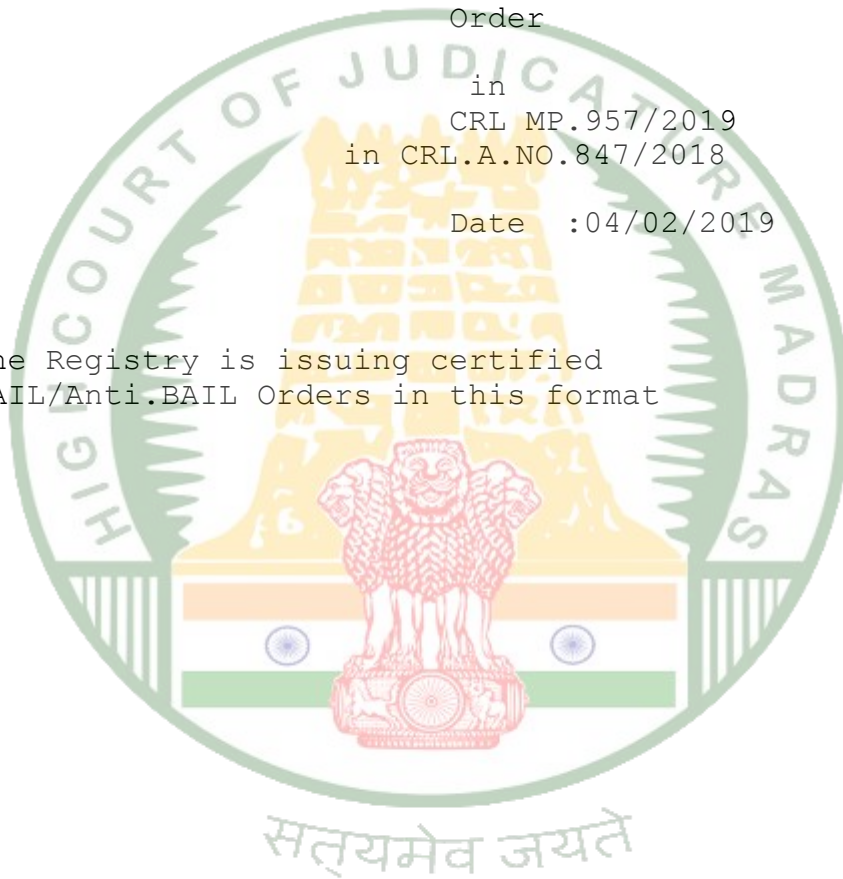
in

CRL MP.957/2019

in CRL.A.NO.847/2018

Date :04/02/2019

From 7.2.2001 the Registry is issuing certified
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ths : 07.02.2019



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