

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Fourteenth 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.902 of 2019

IN CRL.A.NO.46 OF 2019

1 DINESH

[PETITIONERS]

2 RAJA

3 RAJA @ UDAYAVANAN

4 BABU @ RAJA @ THENNARASU

Vs

STATE REP.BY

[RESPONDENT]

THE INSPECTOR OF POLICE,
MELPATTI POLICE STATION,
VELLORE.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.NO.46 OF 2019 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed in SC.No.11 of 2016 on the file of the learned Additional Dist.Judge, Fast Track Court, Vellore in the Judgment dated 31.10.2018 and enlarge the petitioners on bail till the disposal of Crl.A.No.46 of 2019 on the file of this Hon`ble court.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.NO.46 OF 2019 on the file of the High Court and upon hearing the arguments of MR.N.R.ELANGO SENIOR COUNSEL FOR M/S.ARUNA ELANGO, Advocate for the petitioner and of MR.R.PRATHAP KUMAR, ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

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

The petitioners/appellants are arrayed as A-1 to A-4 and they stood charged, tried and convicted by the Trial Court vide impugned judgment dated 31.10.2018 in SC.No.11/2016 on the file of the Court of the Additional Sessions Judge, Fast Track Court, Vellore. The details of their conviction and sentence as follows:-

Rank of the accused	Conviction under section	Sentence imposed
A-1 to A-3	294[B] IPC	Each of the accused was sentenced to undergo 3 months simple imprisonment and to pay a fine of Rs.500/- each, in default, to undergo one month simple imprisonment.
	302 IPC	Each of the accused was sentenced to undergo imprisonment for life and to pay a fine of Rs.2000/- each, in default, to undergo 1 month rigorous imprisonment for the offence u/s.302 IPC.
	341 IPC	Each of the accused was sentenced to undergo 1 month simple imprisonment and to pay a fine of Rs.500/- each, in default, to undergo 1 week simple imprisonment.
A-4	302 r/w 34 IPC	Sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.2000/-, in default, to undergo 2 months rigorous imprisonment .

The Trial Court had ordered the sentences to run concurrently and also granted set-off u/s.428 Cr.P.C. Challenging the said conviction and sentence, the petitioners/appellants preferred the present appeal and pending appeal, they have filed the present petition seeking suspension of the substantive sentence of imprisonment.

2 The case of the prosecution is that P.W.1 is employed as a Warden in Puzhal Central Prison and he was suffering due to piles and also undergone a surgery and for dressing the wound, he used to go to Ambur Biswas Clinic twice daily, at morning as well as in the evening and he was also on medical leave. On 24.04.2014 at about 6.00 p.m., when P.W.1 was proceeding to Ambur Biswas Clinic from M.V.Kuppam via Azhinjikuppam by engaging the services of the auto of the deceased Charles, bearing registration No.TN-23-AH-2217 along with P.Ws.2 to 4, and when the auto was nearing Azhinjikuppam Bus Stand, it dashed against Babu @ Thennarasu [A-4 herein] and there was a wordy altercation between the deceased Charles and A-4 and in that process, the deceased beat A-4 and also pushed him down. A-4 threatened Charles with grave consequences. P.W.1, after dressing the wound, was returning along with P.Ws.2 to 4 at about 8.30 p.m., in the auto driven by the deceased Charles and at that juncture, A-1 to A-3, armed with wooden logs [M.O.1 series], blocked the auto and after altercation, pulled Charles out of the auto and A-1 by using a wooden

log, hit him on the head ; A-2 attacked him on the shoulder by using a wooden log and A-3, by using a wooden log, hit Charles on the stomach. P.Ws.1 to 3 intervened and took Charles to the hospital through some other auto. P.W.1, on account of pain suffered due to the surgery undergone by him, took tablets and slept and on the next day morning, on coming to know that Charles had died, went to Melpatti Police Station and prepared a written complaint under Ex.P.1 and lodged the said complaint to P.W.12-Sub Inspector of Police, who upon receipt of the same, has registered a case in Cr.No.53/2014 and prepared the Printed FIR, marked as Ex.6 and thereafter, proceeded with the investigation. The investigation was continued by P.Ws.18 and 19 and P.W.19, after completion of the investigation and after obtaining opinion, has filed the Final Report, charging all the accused for the commission of the offences u/s120[b], 341, 294[b], 302 read with 109 and 120[b] IPC before the Court of Judicial Magistrate, Gudiyatham, who on receipt of the Final Report, took it on file in PRC No.5/2015, summoned the accused and furnished them with the copies of the documents u/s.207 Cr.P.C. and having found that the case is exclusively tried by the Sessions Court, committed the same to the Court of Principal District and Sessions Judge, Vellore, who in turn, had made over the case of the Court of Additional Sessions Judge, Fast Track Court, Vellore, who took the case on file in SC.No.11/2016. All the accused were summoned and charges were framed and they denied the charges. The prosecution, in order to sustain its case, examined P.Ws.1 to 19 besides marking Exs.P.1 to 13 and also M.O.1 series. All the accused/petitioners were questioned u/s.313[1][b] Cr.P.C., with regard to the incriminating circumstances made out against them in the evidences rendered by the prosecution and they denied it as false. The accused did not file any documents nor let in any oral evidence. The Trial Court, on consideration and appreciation of the oral and documentary evidences, convicted and sentenced the petitioners/appellants/accused as stated above vide the impugned judgment.

3 Mr.N.R.Elango, learned Senior Counsel assisted by Mrs.Aruna Elango, learned counsel appearing for the petitioners/appellants/A-1 to A-4 made the following submissions:-

- P.Ws.1 to 4 could not have witnessed the occurrence.
- There is a considerable delay on the part of P.W.1 in lodging the complaint-Ex.P.1 and the same has not been properly explained.
- The FIR came to be registered on the next day of the occurrence, i.e., 25.04.2014 and had reached jurisdictional Magistrate Court only about 30 hours later on 26.04.2014 and despite P.Ws.18 and 19 were specifically questioned as to the belated despatch of FIR, no explanation whatsoever has been offered.
- In Column No.6 of the FIR, marked as Ex.P.6, whitener was used and the name of P.W.1 with his father's name has been inserted and no explanation has been offered despite a specific question.
- Admittedly, Charles, the deceased, who sustained injuries, was initially taken to the Government Hospital at Gudiyatham and thereafter, he was shifted to the Government Hospital, Vellore and from there, to the Government General Hospital, Chennai and

without responding to the treatment, he died and the prosecution, admittedly, did not examine the Casualty Medical Officer who admitted the injured Charles in the Government Hospital, Gudiyatham and the connected medical records have not been seized and the doctor, who conducted autopsy, viz., P.W.13, would state that during the course of postmortem, she noted two sutured wounds in the skull and no explanation has been offered as to when the surgery was done on the skull of the deceased and in the absence of examining any doctors, who

administered treatment to the injured in the Government Hospital at Vellore, the cause of death itself is doubtful.

- On the alleged date of occurrence, Parliament election was conducted and nearby the place of occurrence, there was heavy police bundobust and P.Ws.8 and 9 would also state about the said fact and if the alleged occurrence, as projected by the prosecution, had taken place, then definitely police would have intervened and therefore, the origin and genesis of the occurrence as well as the complaint becomes highly doubtful.
- Admittedly, the deceased was the friend of P.Ws.1 to 4 and when the occurrence took place, they did not make any attempt to intervene and only after the occurrence was over, they took the injured to the hospital and hence, their conduct is highly unusual.
- P.W.6 - the witness to conspiracy would have heard the alleged conversation as to the said conspiracy for the reason that after the surrender of A-4 [Babu @ Thennarasu] on 05.05.2014 before the Magistrate Court concerned, the statement u/s.161[3] Cr.P.C., was recorded on 09.05.2014 and the statements of all the witnesses and the other materials have been sent to the jurisdictional Magistrate Court only at the time of Final Report on 22.02.2015 and as to the belated despatch, no reasons whatsoever has been assigned.

The learned Senior counsel, pointing out the above said infirmities would urge that since the case of the prosecution is bristled with so many infirmities and inconsistencies, the Trial Court ought to have acquitted the petitioners/appellants/accused and would submit that since there is a bright chance of success for the petitioners/appellants in this appeal, prays for suspension of the substantive sentence of imprisonment. He also undertakes that the petitioners/appellants would abide by any conditions that may be imposed by this Court.

4 *Per contra*, Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the State would submit that as to the belated lodging of the complaint under Ex.P.1, P.W.1 has given tenable and acceptable explanation/reason and P.Ws.1 to 4 knew all the accused and their testimonies corroborate with each other of all material particulars and as to the conspiracy hatched, P.W.6 has also cogently given evidence and the doctor-P.W.13, who conducted postmortem, has also deposed that the deceased died on account of head injury and the testimonies of the eyewitnesses coupled with the

scientific evidence has established the case of the prosecution beyond reasonable doubt and would further urge that the points raised by the learned Senior counsel for the petitioners/appellants can be appreciated only during the course of final hearing of the appeal and prays for dismissal of this petition.

5 This Court has considered the rival submissions and also perused the materials placed before it including the impugned judgment.

6 A perusal of the deposition of P.Ws.1 to 4 would *prima facie* disclose that they did not know the auto number in which they were travelling and they did not identify the place of occurrence to the Investigating Officer. When the occurrence took place, though P.Ws.1 to 4, especially, P.Ws.2 to 4 were close friends of the deceased Charles, they did not make any attempt to intervene and only after the attack was over, they intervened. P.W.1 has given explanation as to the belated lodging of the complaint under Ex.P.1 and this Court, for the present, is inclined to accept the same. The testimony of P.W.12 would disclose that some corrections were made in FIR by using whitener and the name of P.W.1 along with his father name, has been inserted. Though FIR came to be registered on the next day, i.e., on 25.04.2014, at about 12.00 Noon, it reached the jurisdictional Magistrate Court only on 26.04.2014 at about 6.15 hours and both P.Ws.12 and 18 have been specifically questioned as to the belated despatch of FIR and they did not offer any explanation as to the said delay. It is to be noted at this juncture that the injured was initially taken to the Government hospital, Gudiyatham and he was treated by P.W.17 and thereafter, he was shifted to the Government Hospital at Vellore and it appears that he was given further treatment including suturing of the wounds and however, no doctor attached to the said hospital has been examined nor medical records have been seized and thereafter, he was shifted to the Government General Hospital at Chennai and without responding to the treatment, he died subsequently and the testimony of P.W.13 would also disclose that before conducting postmortem, she noted two sutured wounds on the skull.

7 The course or the manner of treatment given in the Government Hospital, Vellore, also assumes great importance and however, the prosecution did not examine anybody in connection with the treatment given to the injured in the said hospital at that point of time. P.W.4, who was also one of the eyewitnesses, did not state about the role played by A-4 in his chief examination. It is also pertinent to point out at this juncture that A-4 surrendered on 05.05.2014 and P.W.6 was examined subsequent to his surrender on 09.05.2014 and thereafter only, the conspiracy charge was added and as rightly pointed out by the learned Senior counsel, the statements of all the material witnesses, viz., P.Ws.1 to 4 and all other documents had reached the jurisdictional Magistrate Court only on 22.02.2015 after much delay and no plausible explanation *prima*

facie appears to have been given by the Investigating Officers. In the light of the said infirmities, this Court is of the considered view that the substantive sentence of imprisonment imposed against the petitioners/appellants alone be suspended pending disposal of the appeal.

8 In the result, the petition is **ordered** and the substantive sentences of imprisonment alone in respect of the petitioners/appellants/A-1 to A-4 herein, are suspended and the petitioners/appellants/A-1 to A-4 are directed to be enlarged on bail on condition that each of the petitioners/appellants/A-1 to A-4 shall execute a bond for a sum of Rs.25,000/- [Rupees twenty five thousand only] with two sureties each for a like sum to the satisfaction of the learned Additional District Judge, Fast Track Court, Vellore and on further condition that the petitioners/appellants/A-1 to A-4 shall appear before the Committal Court, viz., the Court of Judicial Magistrate, Gudiyatham, on the first working day of every English Calendar Month at 10.30 a.m. until further orders.

-sd/-
14/02/2019

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 ADDITIONAL DISTRICT JUDGE,
FAST TRACK COURT, VELLORE.

2 THE JUDICIAL MAGISTRATE,
GUDIYATHAM.

3 THE CHIEF JUDICIAL MAGISTRATE
VELLORE. [FOR INFORMATION]

4 THE INSPECTOR OF POLICE,
MELPATTI POLICE STATION, VELLORE.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

+3C.C. to M/S.ARUNA ELANGO Advocate on payment of necessary
charges in SR.NO. 3556

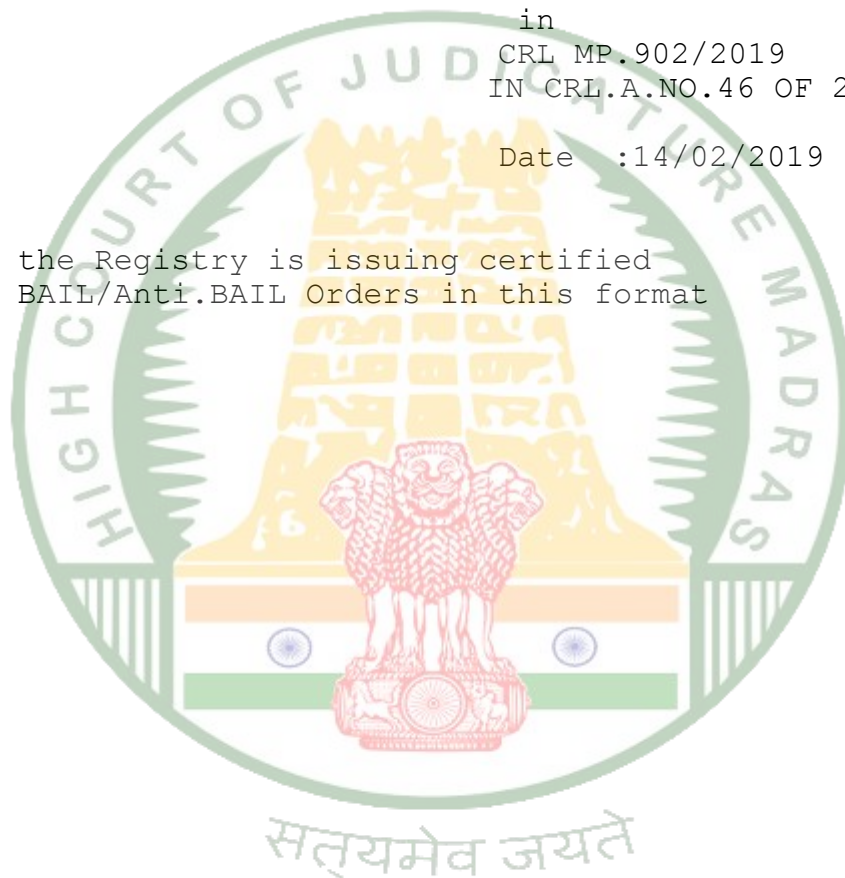
Order

in
CRL MP.902/2019
IN CRL.A.NO.46 OF 2019

Date :14/02/2019

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MLT-19/02/2019



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