

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Eighth day of March Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M. SATHYANARAYANAN

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.3222 OF 2019

IN CRL.A.NO.769 OF 2018

1 SAGAJANANTHAN
2 MADHAN MOHAN

[PETITIONERS/ APPELLANTS / ACCUSED]

Vs

THE STATE REP. BY,
THE INSPECTOR OF POLICE
CHIDAMBARAM TALUK,
CHIDAMBARAM, CUDDALORE.
CR.NO.86 OF 2013

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.NO.769 OF 2018 on the file of the High Court, the High Court will be pleased to suspending the sentences of imprisonment inflicted upon in the Petitioners/Appellants herein in S.C.No.70/2015 vide the judgment of conviction dated 20.09.2018 passed by the learned II Additional District and Sessions, Cuddalore District at Chidambaram and to enlarge the petitioners/appellants on bail CRL.A.NO.769 OF 2018 [IN CRL.MP.NO.3222 OF 2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.NO.769 OF 2018 on the file of the High Court and upon hearing the arguments of M/S.G.PRABHAKARAN, 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 are accused nos.8 and 10 in S.C.No.70/2015 on the file of the II Additional District and Sessions Judge, Cuddalore District and they along with 12 other accused are prosecuted for the commission of offences under Sections 147, 148, 294 (b), 436 & 302 IPC. The Trial Court, vide impugned judgment dated 20.09.2018, convicted and sentenced the petitioners/appellants as under:

S.I.No	Rank of the Accused	Conviction passed by Trial Court	Sentence awarded by Trial Court
1.	Petitioners 1 and 2/A.8 and A.10	147 IPC	Sentenced to undergo Rigorous Imprisonment for six months
2.	Petitioners 1 and 2/A.8 and A.10	294 (b) IPC	Imposed a fine of Rs.250/- each with default sentence of one month Simple imprisonment.
3.	Petitioners 1 and 2/A.8 and A.10	436 IPC	Sentenced to undergo Rigorous Imprisonment for seven years and imposed with a fine of Rs.2,000/- with default sentence of one year Simple Imprisonment.
4.	Sentenced to undergo Rigorous Imprisonment for	302 r/w. 149 IPC	Sentenced to undergo life imprisonment and imposed with a fine of Rs.2,000/- with default sentence of one year Simple Imprisonment.

Challenging the legality of the conviction and sentence, these petitioners along with A-12 filed CrI.A.No.769 of 2018 and pending disposal of the same, on an earlier occasion filed CrI.M.P.No.15914 of 2018, praying for suspension of substantive sentence of imprisonment. This Court vide order dated 06.12.2018 had suspended the suspension of sentence in so far as A12 is concerned and dismissed the petition as withdrawn in respect to the present petitioners / A-8 and A-10. The present petition for suspension of sentence filed by them is the second petition.

2. The learned counsel appearing for the petitioner would submit that the motive projected by the prosecution is on account of the election dispute between A-1 and the deceased Sampathkumar and the overt act alleged by the prosecution is that all the accused formed themselves into an unlawful assembly to do away with the life of Sampathkumar and they took decision to set fire to his house and

A-2 abused the deceased and asked the accused to finish him off and accordingly, A-11 took a kerosene can from the house of A-4 and poured it on the thatched house as well as the cattle shed and A-6 to A-11 set fire and when Sampath Kumar came out of his house, A-1, A-2, A-3, A-4, A-5, A-12, A-13 & A-14 attacked brutally and caused head injuries and as a result of which, he died.

3. It is the submission of the learned counsel appearing for the petitioner that though the prosecution had cited P.W.2 to P.W.10 as witnesses, except P.Ws.3 and 5, rest of the witnesses turned hostile and the said witnesses, P.W.3, was the wife of the deceased and P.W.4 was the mother of the deceased and P.W.1 was the Sister in Law of the deceased and except the interested testimonies, there are no materials to connect the petitioners with the commission of offence and he would further add that even as per the Postmortem Report marked as Ex.P12, the cause of death is due to grave injury on the head only and since the petitioners / A-8 & A-10 did not have any bad antecedents, prays for suspension of substantive sentence of imprisonment.

4. *Per contra*, Mr.R.Prathapkumar, learned Additional Public Prosecutor appearing for the State would contend that all the accused formed themselves into an unlawful assembly for the purpose of murdering the deceased Sampath Kumar. Accordingly, A-11 poured kerosene on the thatched shed and cattle shed, wherein the deceased was inside and these petitioners along with A-6 & A-10 set fire and when he came / rushed outside, died to death by the above said accused by using lethal weapons. In the light of the testimonies of the witnesses, the petitioners are not entitled for suspension of sentence and prays for dismissal of this petition.

5. This Court has carefully considered the rival submission and also perused the materials placed before it.

6. A perusal and the consideration of the materials would *prima facie* indicate that though the prosecution had cited, P.Ws 2 to 10 as witnesses, except 3 and 4, who are very closely to the deceased, none of the witnesses supported the prosecution and they turned hostile. Fatal overt act has been attributed to A-1, A-4, A-5 and A-12 and it is also the case of the prosecution that they instigated one of the accused i.e., A-11 to pour kerosene and these petitioners / A-8 & A-10 along with two others, set fire to house. Though the Postmortem report would indicate that the deceased had sustained burn injuries, death was caused on account of attack on his head with lethal weapon.

7. In the light of the fact that the petitioner have not been attributed with any fatal overt act and that they did not have any bad antecedents and except the interested testimonies of P.W.s 3 & 4, no others had supported the case of the prosecution, it is a fit case wherein the sentence imposed upon A-8 & A-10 is to be suspended, pending disposal of the appeal.

8. In the light of the above said fact, this Court is of the considered view that the petitioner / accused nos.8 & 10 are entitled for suspension of substantive sentence of imprisonment. Accordingly, **this petition is ordered** and the substantive sentence of imprisonment imposed on the petitioners, is suspended subject to the 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 in a like sum to the satisfaction of the learned Judicial Magistrate-II, Chidambaram and they shall appear before the said Court on the first working day of every English calender month at 10.30 a.m until further orders.

-sd/-

08/03/2019

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 JUDICIAL MAGISTRATE,
NO.II, CHIDAMBARAM.

2 THE CHIEF JUDICIAL MAGISTRATE
CUDDALORE [FOR INFORMATION]

3 THE II ADDITIONAL DISTRICT
AND SESSIONS, CUDDALORE DISTRICT.

4 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE AS CONVICT
PRISONERS.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE
CHIDAMBARAM TALUK,
CHIDAMBARAM, CUDDALORE.

+2C.C. to M/S.G.PRABHAKARAN Advocate on payment of necessary charges SR NO.5000

Order

in
CRL MP.NO.3222/2019
in
CRL.A.NO.769/2019

Date :08/03/2019

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MK:12/03/2019



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