

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Fifteenth 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.3792 of 2019

IN CRL.A.No.602 OF 2018

ARUMUGAM

[APPELLANT/PETITIONER/ACCUSED]

Vs

STATE REP BY

[RESPONDENT]

THE INSPECTOR OF POLICE,
BAGAYAM POLICE STATION,
VELLORE DISTRICT.
CR.NO.760 OF 2013.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.No.602 OF 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence passed by the Learned Additional District and Sessions Judge (FTC) Vellore District, in S.C.No.12 of 2014 dated 23.07.2018 enlarge on bail pending disposal above Criminal Appeal No.602 of 2018 on the file of this Honble Court.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.No.602 OF 2018 on the file of the High Court and upon hearing the arguments of M/S.M.G.UDAYASHANKAR ADVOCATE FOR M/S.S.SHANTHA KUMARI, 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 petitioner/appellant is the sole accused in Sc.No.12/2014 on the file of the Court of Additional District and Sessions Judge [Fast Track Court]. Vellore and vide the impugned judgment dated 23.07.2018, he was found guilty for the commission of the offences u/s.302, 294[b], 323 and 506[ii] IPC. The Trial Court had imposed the sentence of rigorous imprisonment for life and to pay a fine of Rs.2000/- with a default sentence of one year rigorous imprisonment for the commission of the offence **u/s.302 IPC** ; to undergo 3 months simple imprisonment for the commission of the offence **u/s.294[b] IPC** ; to undergo 1 year simple imprisonment for the commission of the offence **u/s.323 IPC** and to undergo 2 years rigorous imprisonment and

to pay a fine of Rs.1000/- with a default sentence of 6 months rigorous imprisonment for the commission of the offence u/s.506[**ii**] **IPC**. Challenging the said conviction and sentence, the petitioner/appellant preferred the present appeal and pending appeal, he had filed the present petition seeking suspension of the substantive sentence of imprisonment.

2 The motive for the commission of the offence, according to the prosecution is that P.W.4-Saravanan was constructing a house and he kept the sand on the road and when the petitioner/appellant passed by the said road, he abused P.W.4 by using filthy words and also stated as to who had put the sand on the road and also kicked the cement sheet and it got broken and the said act was questioned by the wife of P.W.4, viz., P.W.2-Veni and the petitioner/appellant scolded her in filthy language and also pressed her neck and pushed her on the sane and caused simple hurt to her and at that time P.W.1-Srinivasan and his wife, Anuratha, intervened. The petitioner/appellant brought an iron rod from the house of one Palaniammal [P.W.6] and at that time, the father of P.Ws.1 and 4 intervened and he was hit on the head by the petitioner/appellant by using the iron rod and as a consequence, he died.

3 The learned counsel for the petitioner/appellant would submit that the eyewitness to the occurrence is P.W.1-son of the deceased and brother of P.W.4 and according to P.W.18-Investigating Officer, P.W.1 came to the Police Station and lodged a complaint at about 1.00 a.m., on 11.07.2013, based on which FIR came to be registered and investigation commenced, however P.W.1 in the cross-examination, had deposed that the police came to Adukamparai Government Hospital even at about 8.00 or 9.00 p.m., on the date of occurrence on 10.07.2013 and he orally lodged a complaint to the police and on the same day at about 10.00 p.m., the police came to his house. In the light of the said testimony/evidence of P.W.1, the evidence of P.W.18 as to the registration of FIR on the next day on the early morning hours on 11.07.2013 at about 1.00 a.m., cannot be believed and therefore, the origin and genesis of the occurrence also becomes highly doubtful. Learned counsel for the petitioner/appellant has also drawn the attention of this Court to the testimony of P.W.18 who registered FIR and would submit that though FIR came to be registered at about 1.00 a.m., on 11.07.2013, it had reached the jurisdictional Magistrate Court only at 10.30 a.m., on 11.07.2013 and P.W.18 would admit that the distance between the Police Station and the Court is only 1 Km and despite a specific question asked, the belated despatch of FIR has not been explained. Alternately, it is pleaded by the learned counsel that admittedly, the petitioner/accused did not carry any weapon and there was some wordy altercation and thereafter, he took the iron rod from the house of P.W.4 and hit the deceased, who intervened and as such, the conviction recorded and sentence imposed by the Trial Court is wholly unsustainable and prays for suspension of the substantive sentence of imprisonment imposed on the petitioner/appellant.

4 Per contra, Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the State would submit the Trial Court has rightly believed the testimony of the eyewitness, viz., P.W.1, and also the scientific and other evidences and rightly reached the conclusion to convict and sentence the petitioner/appellant accordingly and the points urged by the learned counsel for the petitioner/appellant can be appreciated only at the time 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 impugned judgment and the testimonies of the relevant witnesses would disclose that the only eyewitness to the occurrence is P.W.1-son of the deceased and as rightly pointed out by the learned counsel for the petitioner/appellant, P.W.1 in the cross-examination, would depose that the police came to Adukamparai Government Hospital even on the date of occurrence on 10.07.2013 at about 8.00 or 9.00 p.m., and he has given an oral complaint and on the same day at about 10.00 p.m., police once again came to his house. However, the testimony of P.W.18-the Investigating Officer, would disclose as if P.W.1 came to the police station and lodged the complaint at about 1.00 a.m., on 11.07.2013. That apart, the belated despatch of FIR has not been properly explained by P.W.18 and P.W.19-the Investigating Officer, would also admit that the Head Constable who has taken FIR to the jurisdictional Court, was not examined. In the light of the above facts and circumstances and the reasons assigned, this Court is of the considered view that this is a fit case wherein the substantive sentence of imprisonment imposed on the petitioner/appellant can be suspended.

7 In the result, the petition is **ordered** and the substantive sentence of imprisonment alone in respect of the petitioner/appellant is suspended and the petitioner/appellant directed to be enlarged on bail on condition that the petitioner/appellant 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.1, Vellore and on further condition that the petitioner/appellant shall appear before the Committal Court, viz., the Court of Judicial Magistrate, No.1, Vellore [PRC No.27/2013], on the first working day of every English Calendar Month at 10.30 a.m. until further orders.

-sd/-

15/03/2019

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 ADDITIONAL DISTRICT AND
SESSIONS JUDGE (FAST TRACK COURT),
VELLORE DISTRICT.

2 THE JUDICIAL MAGISTRATE,
NO.I, VELLORE.

3 THE CHIEF JUDICIAL MAGISTRATE
VELLORE. [FOR INFORMATION]

4 THE INSPECTOR OF POLICE,
BAGAYAM POLICE STATION,
VELLORE DISTRICT.

5 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

6 THE PUBLIC PROSECUTOR,
HIGH COURT,MADRAS.

+1C.C. to M/S.S.SHANTHA KUMARI Advocate on payment of necessary
charges in SR.NO. 5563

Order

in

CRL MP.3792/2019

IN CRL.A.No.602 OF 2018

Date :15/03/2019

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

MLT-21/03/2019