

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Thirtieth day of April Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M. SATHYANARAYANAN

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.5263 of 2019

in CRL.A.No.217 of 2019

VIJAYALAKSHMI

[PETITIONER / APPELLANT]

Vs

STATE THROUGH
INSPECTOR OF POLICE,
CUDDALORE OLD TOWN POLICE STATION,
CUDDALORE.
CRIME NO.515 OF 2015.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.No.217 of 2019 on the file of the High Court, the High Court will be pleased to suspend the execution of sentence of the petitioner dated 14.03.2019 passed in S.C.No.130 of 2016 on the file of the Mahila Court, Cuddalore and the petitioner/appellant (A6) Who is remanded to judicial custody after judgement, be released on bail pending disposal of the above CRL.A.No.217 of 2019.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.No.217 of 2019 on the file of the High Court and upon hearing the arguments of M/S.V.LAKSHMANAN, 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 was arrayed as A6 in S.C.No.130 of 2016 on the file of the Mahila Court, Cuddalore. The Trial Court, vide impugned judgment dated 14.03.2019, found A1 to A6 guilty and sentenced them as follows:

Accused	Charged under Section	Conviction and Sentence
A1	U/s 148, 294(b), 324(2counts) 302 r/w 149 and 506 (ii) IPC	1.Under Section 148 IPC, sentenced to undergo Simple Imprisonment for a period of two years and to pay of fine of Rs.500/- in default to undergo Simple Imprisonment for a period of three months. 2.Under Section 294(b) IPC to undergo Simple Imprisonment for a period of one month and to pay of fine of Rs.500/- in default to undergo Simple Imprisonment for a period of 15 days. 3.Under Section 323(3 counts) IPC to undergo Simple Imprisonment for a period of three month and to pay of fine of Rs.500/- in default to undergo Simple Imprisonment for a period of 15 days. (each count) 4.Under Section 506(ii) IPC to undergo Simple Imprisonment for a period of two years and to pay of fine of Rs.500/- in default to undergo Simple Imprisonment for a period of three months. Under Section 302 r/w 149 IPC to undergo Rigorous Imprisonment for life and to pay of fine of Rs.5000/-, in default to undergo Simple Imprisonment for a period of two years.

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Accused	Charged under Section	Conviction and Sentence
A2 to A6	U/s 147, 294(b), 324, 302 r/w 149 and 506(ii) IPC	1.Under Section 147 IPC, sentenced to undergo Simple Imprisonment for a period of one years and to pay of fine of Rs.500/- in default to undergo Simple Imprisonment for a period of three months. 2.Under Section 294(b) IPC to undergo Simple Imprisonment for a period of one month and to pay of fine of Rs.500/- in default to undergo Simple Imprisonment for a period of 15 days. 3.Under Section 323(3 counts) IPC to undergo Simple Imprisonment for a period of three month and to pay of fine of Rs.500/- in default to undergo Simple Imprisonment for a period of 15 days. (each count) 4.Under Section 506(ii) IPC to undergo Simple Imprisonment for a period of two years and to pay of fine of Rs.500/- in default to undergo Simple Imprisonment for a period of three months. Under Section 302 r/w 149 IPC to undergo Rigorous Imprisonment for life and to pay of fine of Rs.5000/-, in default to undergo Simple Imprisonment for a period of two years.

The Trial Court has directed the sentence of imprisonment to run concurrently and also granted set off under Section 428 CrPC and challenging the conviction and sentence, present appeal is filed by all the convicted accused and the present petition for suspension for substantive sentence of imprisonment has been filed by A-6 alone.

2. The learned counsel appearing for the petitioner would submit that the case of the prosecution is that the deceased Vijaya was the daughter of Pakkirisamy and since, sewerage water from Kaliyamoorthy's house stagnated near the house of Pakkirisamy, the neighbours often quarreled with each other and it was a long time dispute. On 14.08.2015, A1 to A3 and A6 were attacked and beaten up Pakkirisamy and his wife. Therefore, they were admitted in Government Hospital, Cuddalore and though a complaint was lodged, no action was taken. On the next day on 15.08.2015, deceased Vijaya / daughter of

Pakkirisamy came out of the house to fetch water from the hand pump situated in front of the house. All the accused unlawfully assembled and A1 and A2 forcefully abused Vijaya and A1 armed with deadly weapon (Iron Pipe-M.O.1) gave a strong blow on the head of the Vijaya and she fallen down. Eyewitnesses P.W.1, 3 and 4 were rushed to prevent the attack on Vijaya, A1 to A6 took bricks (M.O.2 series) and started attacking the eyewitnesses and the deceased Vijaya. Consequently the deceased Vijaya was taken to Government Hospital, Cuddalore along with the injured witnesses. On account of simple injuries P.Ws.1, 3 and 4 were given treatment and the said Vijaya lost her breathe after admitted in Hospital.

3. The learned counsel would further state that the complaint was given by one of the injured witnesses and an FIR was registered, which has been marked as Ex.13 and in the FIR, specific overt act has not been spoken and however, during the course of investigation, P.Ws.1,3 and 4 had spoken about the overt act on the part of them and would further add that the petitioner / 6th accused is a M.Sc B.Ed Graduate and she is employed as a Teacher in C.K.School of Practical Knowledge, Matriculation Higher Secondary School and her minor children, namely K.Vishal, aged about 13 years and K.Subiksha, aged about 10 years, were studying 8th and 5th Standard in the same School, where she is working and since, she has been convicted, nobody is there to take care of her minor children and they are suffering. Even according to the prosecution, the injured witnesses had sustained only simple injuries and the primordial cause of the death of the deceased was on account of blunt force impact on his head, which is said to have been caused by A1 by using Iron Pipe (M.O.1) and would further add that during the course of trial, the petitioner was on bail and she has not came to adverse notice in any cases and hence prays for suspension of substantive sentence of imprisonment.

4. Mr.R.Prathapkumar, learned Additional Public Prosecutor appearing for the State would submit that P.W.s.1, 3 and 4 / injured witnesses have specifically spoken about the overt act on the part of the petitioner / A-6 also and as per the opinion of P.W.13, the Doctor who conducted autopsy coupled with Ex.P7- Postmortem Report, the deceased had died due to shock and hemorrhage due to multiple injuries as a result of blunt force impact. The Trial Court has also taken into consideration the unlawful assembly of all the accused including A-6 and thought fit to convict all the accused under Section 323 r/w 149 IPC for the commission of offence under Section 302 IPC and prays for dismissal of this petition for suspension of substantive sentence of imprisonment.

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

6. A perusal of the materials placed and consideration of the submissions made would indicate that at the earliest point of time, the overt act on the part of the petitioner / A-6 has not been specifically spoken and however, during the course of testimonies of witnesses, overt act on the part of the petitioner came to in the form of improvement light and the death of the deceased was caused due to blunt force impact, which have been caused by using iron pipe (M.O.1) by A1, who did not file any petition for suspension of substantive sentence of imprisonment. The petitioner has been convicted with the aid of Section 149 IPC and taking into consideration of the fact that she is a Post Graduate degree holder and also employed as a Teacher and that her minor children were longing for care and suffered on account of her confinement and that the chance of success is also bright in the appeal, this Court is inclined to grant suspension of substantive sentence of imprisonment.

7. In the light of the above facts and circumstances and reasons assigned above, this Court is of the opinion that this is a fit case wherein the sentence imposed upon A6 is to be suspended, pending disposal of the appeal. **Accordingly, this petition is ordered** and the substantive sentence of imprisonment imposed on the petitioner, is suspended subject to the condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties in a like sum to the satisfaction of the Judicial Magistrate No.II, Cuddalore and she shall appear before the said Court on the first working day of every English calendar month at 10.30 a.m until further orders.

-sd/-

30/04/2019

This order, on being produced, be punctually observed and carried into execution by all concerned

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Sub-Assistant Registrar (Statistics/C.S.)

High Court, Madras - 600 104.

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TO

1 THE JUDICIAL MAGISTRATE NO.II
CUDDALORE

2 THE CHIEF JUDICIAL MAGISTRATE
CUDDALORE [FOR INFORMATION]

3 THE MAHILA COURT
CUDDALORE

4 THE SUPERINTENDENT,
CENTRAL SPECIAL PRISON FOR WOMEN,
VELLORE

5 THE INSPECTOR OF POLICE,
CUDDALORE OLD TOWN POLICE STATION,
CUDDALORE.

+1 C.C. to M/S.V.LAKSHMANAN Advocate on payment of necessary
charges SR.NO.9175

Order

in

CRL MP.5263/2019

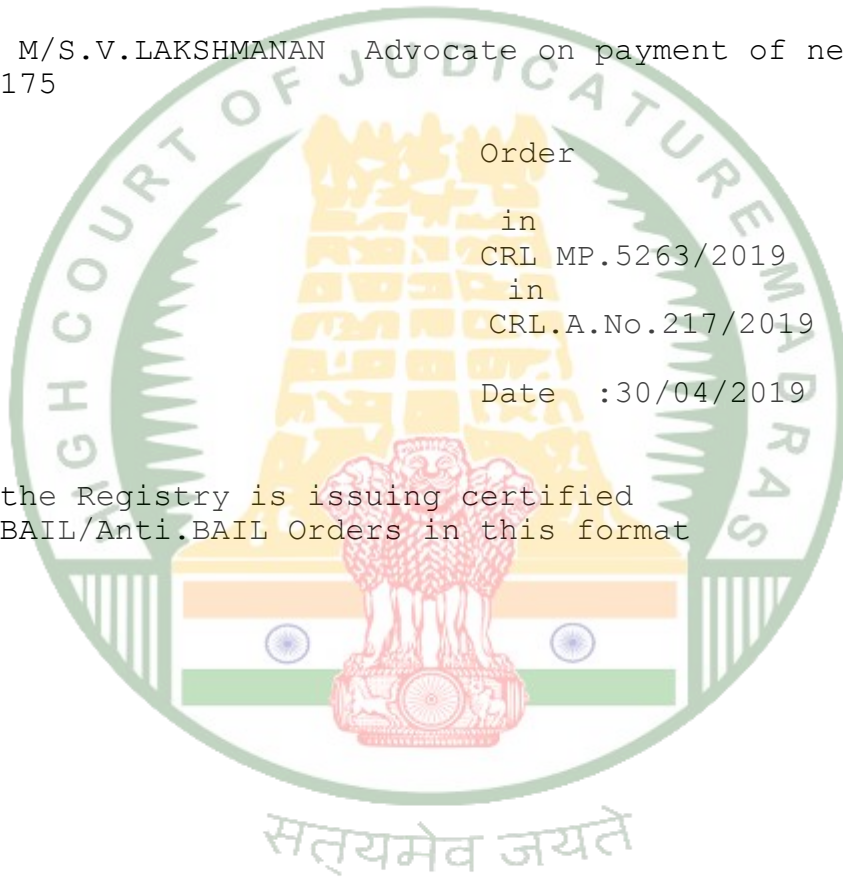
in

CRL.A.No.217/2019

Date :30/04/2019

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cm 08/05/2019



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