

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Criminal Appeal Nos.288, 289 & 290 of 2019

Ajithkumar @ Chandru ... Appellant
in Crl.A.No.288 of 2019/Accused No.3

Iyyanar @ Thadi Ayyanar ... Appellant
in Crl.A.No.289 of 2019/Accused

Manikandan @ Katta Mani ... Appellant
in Crl.A.No.290 of 2019/Accused

.Vs.

The State rep. by
The Inspector of Police,
Villianoor Police Station,
Puducherry.

2. Innarasan

3. R.Lalitha ... Respondents
in all appeals/Complainant

2nd respondent is impleaded as per order
dated 20.06.2019 in Crl.A.No.288 to 290 of 2019.

Third respondent is impleaded as per order in
Crl.M.P.No.13581 of 2019 dated 23.09.2019

Criminal Appeals filed under Section 14(A) (2) of SC/ST Act 1989 to set aside the orders made by the learned Special Judge under Prevention of Atrocities Act, II Additional District & Sessions Judge, Puducherry in Crl.M.P.No.55 of 2019 dated 15.05.2019, Crl.M.P.No.3 of 2019 and Crl.M.P.No.2 of 2019 dated 08.05.2019 and enlarge the appellants on bail in Cr.No.184 of 2019 on the file of the first respondent.

For appellants : Mr.P.Prince Premkumar
in all appeals

For Respondents: Mr.Bharath Chakravarthy
Public Prosecutor (Pondicherry) for R1
in all appeals.
No appearance for R2

Mr.K.Nithyashree for R3
in all appeals.

COMMON JUDGMENT

These appeals have been filed to set aside the order dated made by the learned Special Judge under Prevention of Atrocities Act, II Additional District & Sessions Judge, Puducherry in Crl.M.P.No.55 of 2019 dated 15.05.2019 and Crl.M.P.No.3 of 2019 & Crl.M.P.No.2 of 2019 dated 08.05.2019 respectively and enlarge the appellants on bail in Cr.No.184 of 2019 on the file of the first respondent.

2. The case of the prosecution is that as per the defacto complainant/Innarasan is that he is residing at Karayampet, Villianoor, Puducherry and that on 14.07.2018 at about 16:35 hrs when the the defacto complainant and deceased Tamizh @ Elavarasan were proceeding in their two wheeler for supplying milk in the society through 3rd Vanniyar Street at the junction of Thirukanchi Road the accused persons Iyyanar @ Thadi Ayyanar, Manikandan @ Katta Mani, Ajithkumar @ Chandru along with four other persons have way laid them and attacked them indiscriminately with deadly weapons and due to which they sustained injuries. The injured Tamizh @ Elavarasan was taken in an ambulance to the hospital, where he was declared brought dead. On the complaint given by Innarasan the case in Crime No.185 of 2018 was registered for offence under Section 147, 148, 341, 302, 120(B), 212 IPC r/w Sec.149 IPC @ Sec.147, 341, 302, 120(B) 212 IPC & Sec.3 (2) (v) of SC/ST (Prevention of Atrocities Act) 1989 r/w 149 IPC.

3. The appellants were arrested on 16.07.2018 and the respondent Police after investigation filed the final report before the Special Judge under Prevention of Atrocities Act, II Additional District & Sessions Judge, Puducherry and the case has been taken up in Special S.C.No.01 of 2019. The appellants have filed an application for bail in Crl.M.P.No.55 of 2019, Crl.M.P.No.3 of 2019 & Crl.M.P.No.2 of 2019 and the learned Special Judge had dismissed the applications for bail against which the present appeals have been filed.

4. The learned counsel for the appellants would submit that the appellants are innocents and they have been falsely implicated in this case due to communal rivalry. Right from the

date of arrest they have been inside the jail and that the prosecution has completed examining the crucial witnesses PW1 to PW14 and other than PW8 the appellants have cross examined all the witnesses. He would further submit that since the appellants are in confinement they are handicapped in defending their case in an effective manner. The other witnesses who remain to be examined are official witnesses. Earlier applications for bail in respect of co-accused was dismissed stating reason that there is a chance of tampering with the witnesses since now that crucial witnesses have been examined and only the official witnesses remain to be examined no prejudice would be caused to the prosecution if the appellants are enlarged on bail. He further submitted that the appellants are prepared to comply with any stringent conditions and that they undertake to abide by any condition that may be imposed by this Hon'ble Court and thereby would seek for granting of bail.

5. The learned Public Prosecutor (Pondicherry) for the first respondent would submit that totally there are eight accused in this case out of which three are minors and that the case against them are split up and pending before the Juvenile Justice Board, Puducherry vide JJB No.02/2017 dated 04.04.2017. The allegation in respect of the appellants are that they have waylaid the deceased and PW1/Innarasan while they were on their way to Kanuvapet Milk Society to deliver milk and the murder has been committed due to previous enmity on account of communal rivalry. The appellants have brutally assaulted the deceased and the defacto complainant with deadly weapons and that the deceased had sustained 26 injuries all over his body. He further submitted that the crucial witness have been examined and that witnesses 2 to 5 have spoken about the involvement of the appellants and the case stands posted for examination of the official witnesses and thereby would object for grant of bail.

6. The learned counsel for the third respondent/ mother of the deceased would submit that due to previous enmity on account of communal rivalry the appellants along with other accused waylaid the deceased when he was on the way to the Milk Society and assaulted them with deadly weapons and caused the death. She further submitted that the witnesses PW2 to PW5 have spoken about the overtact of the appellants. She would further submit that the family members of the appellants/accused have threatened the witnesses in respect of which a complaint has been given to SC/ST Commission, New Delhi and also to the Director General of Police (Pondicherry)

7. At this juncture the learned counsel for the appellants submitted that the appellants are in confinement for more than a year and that the allegation of threatening the witnesses have been made only with the motive to see that the bail petitions

are dismissed.

8. Heard the learned counsels and perused the materials available on record.

9. The appellants are in jail from 16.07.2018 and that the crucial witnesses have been examined by the prosecution and only the official witnesses remain to be examined. Considering the facts and circumstances of the case and also considering the submissions of the learned counsel on either side, this Court is of the view that the appeals may be allowed and the appellants shall be enlarged on bail subject to stringent conditions. Accordingly the appellants/accused are ordered to be enlarged on bail, on the following conditions:-

a. the appellants/accused shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with two sureties each, out of which one shall be a blood relative for a like sum to the satisfaction of the learned Special Judge under Prevention of Atrocities Act, II Additional District & Sessions Judge, Puducherry.

b. The Petitioner/Accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

c. The appellants/Accused shall appear before the Trial Court on all working days at 10.30 a.m. without fail and on Saturdays and Sundays shall appear before the Orleanpet Police Station at 10:30 a.m., and shall not enter into the jurisdictional limits of Villianur Police Station.

d. the appellants shall not abscond during trial.

e. the appellants shall not tamper with evidence or witness during trial.

f. on breach of any of the aforesaid conditions, the learned trial Judge is entitled to take appropriate action against the appellants in accordance with law as if the conditions have been imposed and the appellants released on bail by the learned trial Judge himself as laid down by the Hon'ble Supreme Court in P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560]

g. if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

dpq

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The II Additional District & Sessions Judge,
Puducherry

2. The Inspector of Police,
Villianoor Police Station,
Puducherry.

3. The Special Public Prosecutor, Puducherry

4. The Chief Judicial Magistrate, Puducherry.

5. The SHO Villianur Police Station, Puducherry.

6. The Secretary to Govt of India,
Ministry of Home, Dept of Internal Security Block
New Delhi.

7. The District Magistrate cum Authorized Officer,
Puducherry.

8. The Superintendent, Central Prison, Kalapet,
Puducherry.

9. The Addl. Secretary to Govt., (Home)
Chief Secretariat, Puducherry.

10. The Central Prison, Puducherry.

+6CCs to Mr.P.Prince Premkumar, Advocate, SR.No.92365,89905,
89906, 89907, 92366, 92364
+2CCs to M/s.K.Nithyashree, Advocate, SR.No.93190
(dated : 11/11/2019)

Criminal Appeal Nos.288, 289
& 290 of 2019

Kak(08/11/2019)