

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Nineteenth day of August Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M.M.SUNDRESH

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION NO.8083 & 7488 OF 2019

IN CRL.A.NOS.212 & 372 OF 2019

1 ARIVAZHAGAN @ ARIVU [PETITIONERS / APPELLANTS / ACCUSED
2 SARASU @ SARASWATHY IN CRL.MP.NO.8083 OF 2019
IN CRL.A.NO.372 OF 2019]

1 SENTHIL [PETITIONERS / APPELLANTS
2 NITHIYARAJ IN CRL.MP.NO.7488 OF 2019
IN CRL.A.NO.212 OF 2019]

Vs

STATE BY [RESPONDENT
INSPECTOR OF POLICE, IN BOTH THE PETITIONS]
KALLAKURICHI POLICE STATION,
CR.NO.363/2017.

Petitions praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.NOS.212 & 372 OF 2019 on the file of the High Court, the High Court will be pleased to

[i] suspend the sentence imposed in the judgment dated 22.02.2019 in SC.No.96 of 2018 on the file of the learned III Additional District and Sessions Judge of Kallakurichi, and release the petitioner on bail pending CRL.A.NO.212 OF 2019 [IN CRL.MP.NO.8083 OF 2019]

[ii] suspend the sentence imposed on the petitioners in judgment made in S.C.No.96/2018 dated 22.02.2019 passed by the Honourable IIIrd District and Additional Sessions Court, Kallakurichi, and release the petitioner on bail pending in CRL.A.NO.212 OF 2019 [IN CRL.MP.NO.7488 OF 2019]

Order : These petitions coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.NOS.212 & 372 OF 2019 on the file of the High Court and upon hearing the arguments of M/S.A.G.RAJAN Advocate for MR.B.MOHAN Advocate for the petitioner [IN CRL.MP.NO.8083 OF 2019 IN CRL.A.NO.372 OF 2019] and of M/S.A.G.RAJAN Advocate for M/S.G.GANPATHY Advocate for the Petitioner [IN CRL.MP.NO.7488 OF 2019 IN CRL.A.NO.212 OF 2019] and of MR.R.PRATHAP KUMAR ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent [IN ALL THE PETITIONS] the court made the following order:-

(Order of the Court was made by M.M.SUNDRESH,J)

The petitioners in Crl.M.P.No.8083 of 2019 have been arrayed as A1 and A7 and the petitioners in Crl.M.P.No.7488 of 2019 have been arrayed as A2 and A3 respectively.

2. They have been convicted by the Trial Court in S.C.No.96 of 2018 as under:

(i) A1 has been convicted for the offence punishable under Section 120B IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment, for the offence punishable under Section 148 IPC sentenced to undergo three years rigorous imprisonment, for each of the offence punishable under Sections 449, 364 and 302 IPC sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo one month simple imprisonment, for the offence punishable under Section 386 IPC sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment, for the offence punishable under Section 201 r/w 302 IPC sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment.

(ii) A7 has been convicted for the offence punishable under Section 120B IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment, for the offence punishable under Section 147 IPC sentenced to undergo two years rigorous imprisonment, for the offence punishable under Section 364 IPC sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment, for the offence punishable under Section 386 IPC sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment and for the offence punishable under Section 302 r/w 149 IPC sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment.

(iii) A2 has been convicted for the offence punishable under Section 120B IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment, for the offence punishable under Section 148 IPC sentenced to undergo three years rigorous imprisonment, for each of the offence punishable under Sections 449, 364 and 302 IPC sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo one month simple imprisonment, for the offence punishable under Section 386 IPC sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment and for the offence punishable under Section 201 r/w 302 IPC sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment.

(iv) A3 has been convicted for the offence punishable under Section 120B IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment, for the offence punishable under Section 147 IPC sentenced to undergo two years rigorous imprisonment, for the offence punishable under Section 364 IPC sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment, for the offence punishable under Section 386 IPC sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment and for the offence punishable under Section 302 r/w 149 IPC sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment and for the offence punishable under Section 201 r/w 302 IPC sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment.

3. The case of the prosecution is that there are totally eight accused and two of them died. Pursuant to the civil dispute between the accused on the one side and the defacto complainant and the deceased, the deceased was taken in an auto and after obtaining signatures forcefully done away with by the accused.

4. In respect of the co-accused viz., A5 and A6, this Court, in CrI.M.P.No.5123 of 2019 in CrI A No. 209 of 2019 and in CrI.M.P.No.4620 of 2019 in CrI.A.No.174 of 2019, was pleased to suspend the sentence. The following are the relevant paragraphs :-

CrI.M.P.No.5123 of 2019 in CrI A No. 209 of 2019

prosecution through P.Ws.1,2,4 and 5 would prima facie disclose as to the motive for the commission of the offence, it is to be remembered at this juncture that the case of the prosecution rests upon circumstantial evidence and therefore, it is obligatory on the part of the prosecution to connect all links in the chain of events pointing out the guilt on the part of the petitioner/appellant/A-5 with regard to the fatal over act attributed to him and in the considered opinion of the Court, the prosecution prima facie appears to have failed in its endeavour for the reason that except arrest, confession and recovery in pursuant to the admissible portion of the confession statement, the material witnesses did not speak about the petitioner/appellant/A-5 lastly in the company of the other accused and as to the overt act attributed against the petitioner/appellant/A-5. In the light of the above facts and circumstances, this Court is of the view that the petitioner/appellant/A-5 is entitled for suspension of the substantive sentences of imprisonment pending this appeal.

7. In the result, the petition is ordered and the substantive sentence of imprisonment alone in respect of the petitioner/appellant/A-5 is suspended and the petitioner/appellant/A-5 directed to be enlarged on bail on condition that the petitioner/appellant shall execute a bond for a sum of Rs.10,000/- with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate No.I, Kallakurichi and on further condition that the petitioner/appellant/A-7 shall appear before the Committal Court, viz., the Court of Judicial Magistrate No.1, Kallakurichi [P.R.No.26/2017] on the first working day of every English Calendar Month at 10.30 a.m. until further orders.

Crl.M.P.No.4620 of 2019 in Crl.A.No.174 of 2019

7. A perusal of the testimony of P.W.4 would prima facie indicate that he has not even identified the inmates of the auto and the only overt act attributed against this petitioner/appellant/A-7 is that he procured fuel for the auto in which the assailants were said to have travelled after committing the murder of the deceased. Insofar as the projection of the case that the two-wheeler[M.O.1] belonged to A-7, it

actually belonged to A-2. This Court, is prima facie of the view that the evidence let in by the prosecution in that regard, is very feeble and the petitioner/appellant/A-7 have not been attributed with any fatal overt act and apart from this, it is also brought to the knowledge of this Court that the petitioner/appellant/A-7 is not having any antecedents. In the light of the above facts and circumstances, the petitioner/appellant/A-7 is entitled for suspension of the substantive sentences of imprisonment pending this appeal.

8. In the result, the petition is ordered and the substantive sentence of imprisonment alone in respect of the petitioner/appellant/A-7 is suspended and the petitioner/appellant/A-7 directed to be enlarged on bail on condition that the petitioner/appellant shall execute a bond for a sum of Rs.10,000/- with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate No.I, Kallakurichi and on further condition that the petitioner/appellant/A-7 shall appear before the Committal Court, viz., the Court of Judicial Magistrate No.1, Kallakurichi [PRC.No.26/2017] on the first working day of every English Calendar Month at 10.30 a.m. until further orders.

5. Thus, in the light of the above, we are inclined to suspend the sentence. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that each of the petitioners executes 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.I, Kallakurichi and on further condition that the petitioners shall appear before the concerned Court on the first working day of every month at 10.30 a.m., pending appeal.

-sd/-

19/08/2019

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

AND SESSIONS JUDGE, KALLAKURICHI.

2 THE JUDICIAL MAGISTRATE,
NO.I, KALLAKURICHI.

3 THE CHIEF JUDICIAL MAGISTRATE
VILLUPURAM [FOR INFORMATION]

4 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE.

5 THE SUPERINTENDENT,
VELLORE WOMEN CENTRAL PRISON

6 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

7 THE INSPECTOR OF POLICE,
KALLAKURICHI POLICE STATION.

+4C.C. to M/S.B.MOHAN Advocate on payment of necessary
charges
SR NO.17201

Order

in
CRL MP.8083 & 7488 2019
in
CRL A.212 & 372 OF 2019

Date :19/08/2019

From 7.2.2001 the Registry is issuing certified
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MK:19/08/2019

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