

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the First 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.8287 of 2019

IN CRL.A.No.648 of 2018

JAGADEESHWARAN

[PETITIONER / ACCUSED]

Vs

STATE REP BY
THE INSPECTOR OF POLICE
MELPADI POLICE STATION,
VELLORE DISTRICT.
CR.NO.65 OF 2014

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to

(i) To suspend the sentence of the 1st Appellant in connection with S.C.No.42 of 2017 on the file of the Learned Additional District and Sessions Judge, FTC, Vellore District dated 17.09.2018 enlarge the bail pending disposal of the main Crl.A.No.648/2018.

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S.M.RAJENDIRAN, 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.M.SUNDRESH,J)

The petitioner has been arrayed as A1 for the major offence punishable under Section 302 IPC in S.C. No. 42 of 2017. He was accordingly convicted as against A2 for the offence under Section 304 (II) IPC by the judgment dated 17.09.2018, on the file of the Additional District and Sessions Judge (FTC), Vellore District. The trial Court convicted the petitioner for the offence under Section 300(4) IPC and punishable under Section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/- in default,

sentenced to undergo rigorous imprisonment for another period of one year; for offence under Section 302 r/w 34 IPC, guilty under the proviso of Section 299 of IPC and punishable under Section 304(I) of IPC and convicted and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.2,000/-, in default, sentenced to undergo rigorous imprisonment for another period of one year and the sentences are ordered to run concurrently. Seeking suspension of sentence, the present petition has been filed.

2. The learned counsel appearing for the petitioner would submit that though the earlier application was dismissed, the evidence adduced by Doctor along with Ex.P11 - post-mortem certificate has not been considered in the proper perspective. The post-mortem certificate would indicate that the deceased died of cumulative splenic rupture and cranio cerebral injury. Insofar as the second injury is concerned, the same is attributed to A2, whose sentence has already been suspended by this Court for the conviction rendered under Section 304 (II) IPC. Inasmuch as the overt act against the petitioner is that he has hit the deceased on the head, the offence under Section 302 IPC is not made out and, therefore, it can either be the case fall under 304 Part (I) or Part (II) IPC, as the case may be. In such view of the matter, the petition will have to be allowed as the reasoning adopted by the Bench on the earlier occasion is different.

3. The learned Additional Public Prosecutor appearing for the State submitted that there is eye witness P.W.1. The evidence of P.W.1 was considered by this Court while declining the suspension on the earlier occasion, hence, the petition will have to be dismissed.

4. The petitioner and A2 are brothers. The deceased was the aunt of the petitioner. Even as per the prosecution, the petitioner is stated to have attacked the deceased with single blow with the wooden log. However, the post-mortem certificate -Ex.P.11 would indicate that the deceased died of the common injury suffered.

5. We have also perused the order passed on the earlier occasion. The aforesaid aspects have not been argued and taken note of, while dismissing the petition filed to suspend the sentence. The petitioner has been in incarceration for a period of three months thereafter. However, nearly eleven months have elapsed from the date of the judgment. During such time, the petitioner is undergoing incarceration.

6. Considering the above coupled with the fact that there are valuable points available in the appeal, the substantive sentence of imprisonment alone is suspended on condition that the petitioner 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 Judicial

Magistrate, Katpadi, Vellore and on further condition that the petitioner shall appear before the concerned Court on the first working day of every month at 10.00 a.m. pending appeal.

-sd/-
01/08/2019

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

1 THE ADDITIONAL DISTRICT
AND SESSIONS JUDGE FTC VELLORE DISTRICT.

2 THE JUDICIAL MAGISTRATE,
KATPADI.

3 THE CHIEF JUDICIAL MAGISTRATE
VELLORE. [FOR INFORMATION]

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

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

+1 C.C. to M/S.M.RAJENDIRAN Advocate on payment of necessary charges SR.NO.16050

Order

in
CRL MP.8287/2019
in
CRL.A.No.648/2018

Date :01/08/2019

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

TA-02/08/2019