

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Twenty Third day of September Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M.M.SUNDRESH

and

The Hon`ble Mr Justice RMT. TEEKAA RAMAN

CRIMINAL MISCELLANEOUS PETITION No.10602 of 2019

IN CRL.A.NO.155 of 2019

RAJA

[APPELLANT/ ACCUSED]

Vs

STATE REP. BY ITS [RESPONDENT/COMPLAINANT]
THE INSPECTOR OF POLICE,
VEERANAM POLICE STATION,
SALEM DISTRICT.
(CRIME NO.176 OF 2015).

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 passed in S.C.No.54 of 2016 vide Judgment dated 03.10.2018 on the file of the Learned II Additional District and Sessions Judge, Salem and enlarge the petitioner on bail pending disposal of the above Criminal Appeal No.155/19.

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.OM SAI RAM, 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 A2 along with A1 for the offence punishable under Sections 449 and 302 IPC in S.C.No.54 of 2016 on the file of II Additional District and Sessions Judge, Salem. The trial Court, by judgment dated 03.10.2018 convicted the petitioner and for the offence punishable under Sections 449 IPC, sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo one year simple imprisonment and for the offence under Section 302 IPC, sentenced to undergo life

imprisonment and to pay a fine of Rs.1,000/, in default, to undergo one year rigorous imprisonment and ordered the sentences to run concurrently. Seeking to suspend the sentence awarded by the trial Court, the present petition has been filed.

2. The learned counsel appearing for the petitioner submitted that the motive has not been proved. P.W.7, who is the wife of the deceased has deposed against the case of the prosecution and thus in support of A1. The allegation that the petitioner is the lover of A1 is also not proved. A1, who is the daughter of the deceased has got her sentence suspended. P.W. 1, though the eye witness and being the brother of the deceased was having a civil dispute with the deceased and, therefore, the testimony ought not to have been accepted. Therefore, the sentence imposed by the trial Court will have to be suspended especially when nearly one year has elapsed.

3. The learned Additional Public Prosecutor appearing for the State would submit that there are two eye witnesses in this case. P.W.3 is the neighbour, who also saw the occurrence. The motive has been established through the evidence of P.W.10 coupled with the recovery made. The trial Court considered this aspect while rendering the conviction. Hence, the petition will have to be dismissed.

4. Admittedly, A1 has got her sentence suspended by order dated 01.02.2019 in CrI.M.P.No.16869 of 2018 in CrI.A.No.653 of 2018. The case of the prosecution is that the offence has been committed by both the accused in furtherance to the common intention. The petitioner has been under incarceration for nearly one year. Thus, we do find arguable points available in the appeal particularly in the light of the evidence of P.W.7 coupled with the fact that the occurrence has taken place during the night time.

5. Considering the above coupled with the period of incarceration of the petitioner, we are inclined to suspend the sentence. Accordingly, 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 the Judicial Magistrate No.IV, Salem 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/-

23/09/2019

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 JUDICIAL MAGISTRATE,
NO.IV, SALEM.

2 THE CHIEF JUDICIAL MAGISTRATE
SALEM. [FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
VEERANAM POLICE STATION,
SALEM DISTRICT.

5 THE II ADDITIONAL DISTRICT
AND SESSIONS JUDGE, SALEM.

6 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM.

+1 C.C. to M/S.OM SAI RAM Advocate on payment of necessary
charges SR.NO.19737

Order
in
CRL MP.10602/2019
in
CRL.A.NO.155/2019
Date :23/09/2019

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