

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the 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.11495 of 2019

IN CRL.A.NO.83 of 2019

SELVAM

[PETITIONER]

Vs

STATE, REP.BY
THE INSPECTOR OF POLICE,
NAMAGIRIPETTAI POLICE STATION,
NAMAKKAL DISTRICT.
(CRIME NO.238 OF 2015).

[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 imposed on the petitioner by judgment dated 11.01.2019 by the Additional Sessions Judge, Namakkal in S.C.No.59 of 2016 and enlarge the petitioner on bail, pending disposal of the Criminal Appeal No.83 of 2019.

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. VASUDEVAN B., Advocate for the petitioner, and of MR. K.PRABAKAR, 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 in S.C. No. 59 of 2016 on the file of the Additional Sessions Judge, Namakkal and accordingly the trial Court, by judgment, dated 11.01.2019, convicted the petitioner for the offence punishable under Section 302 r/w 34 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for a period of one year. Seeking suspension of sentence, the present petition has been filed.

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2. The case of the prosecution is that due to the property dispute, the deceased was done away with by all the accused by hitting with wooden logs. A1 is the son of the deceased. A2 is the grandson and A3 is the daughter-in-law.

3. The learned counsel appearing for the petitioner submitted that the overt act is same insofar as all the accused are concerned. Insofar as A2 and A3 are concerned, this Court considered the suspension of sentence in Crl.M.P.No.2121 of 2019 in Crl.A.No.83 of 2019 dated 04.07.2019 in which, the following order was passed:

The petitioners were arrayed as A2 and A3 in S.C. No. 59 of 2016 and accordingly the trial Court, by judgment, dated 11.01.2019, convicted the petitioners for the offence punishable under Section 302 r/w 34 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/- each, in default, to undergo rigorous imprisonment for a period of one year. Seeking suspension of sentence, the present petition has been filed.

2. The case of the prosecution is that due to the property dispute, the deceased was done away with by all the accused by hitting with wooden logs. A1 is the son of the deceased. A2 is the grandson and A3 is the daughter-in-law.

3. The learned counsel appearing for the petitioner would submit that A2 is stated to have attacked the deceased by squeezing the testicles. However, the opinion of the Doctor and the medical report would show that there is no contusion in that sensitive part. Further, it is submitted that all the witnesses turned hostile except P.W.1, who is the interested witness. Insofar as the second petitioner is concerned, there is no specific overt act attributed to her. There are considerable issues involved in the appeal for acquittal. Therefore, the suspension of sentence petition will have to be allowed.

4. The learned Additional Public Prosecutor would submit that there is eye witness available in this case. The trial Court, considering the relevant materials available on record, convicted the petitioners. Hence, the petition will have to be dismissed.

5. We do find several issues involved to be decided in the appeal both on facts and law. Admittedly, the motive is one of family dispute with respect to the property given by the deceased. All the accused are stated to have attacked the deceased with sticks. The opinion of the Doctor insofar as the first petitioner is concerned is that the testicles did not contain any contusion. The second petitioner, being the mother of the first petitioner, did not have any specific overt act attributed against her. She is under incarceration for more than six months.

6.Considering the above, the substantive sentence of imprisonment alone is suspended on condition that each of 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, Rasipuram and on further condition that the petitioners shall appear before the said Court on the first working day of every month at 10.00 a.m., pending appeal.

4.It is further submitted that the alleged occurrence is said to have happened pursuant to the wordy quarrel. The deceased is none other than the father of the petitioner. The overt act is also to the effect that he attacked with stick as noted in the order aforesaid. The petitioner has been under incarceration for nearly eight months.

5.Considering the above, 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, Rasipuram and on further condition that the petitioner shall appear before the said Court on the first working day of every month at 10.00 a.m., pending appeal.

-sd/-
03/09/2019

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.

सत्यमेव जयते

TO

1 THE ADDITIONAL SESSIONS
JUDGE, NAMAKKAL.

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

3 THE INSPECTOR OF POLICE,
NAMAGIRIPETTAI POLICE STATION,
NAMAKKAL DISTRICT.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

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+1 C.C. to M/S. VASUDEVAN B. Advocate on payment of necessary charges SR.NO.18437

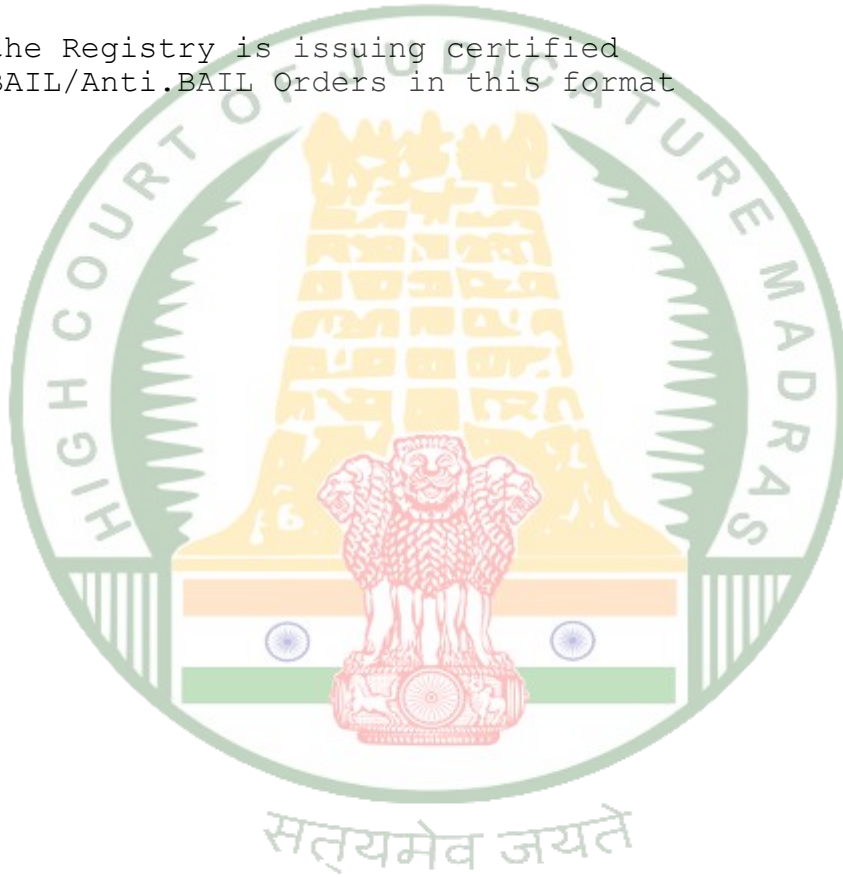
Order

in
CRL MP.11495/2019
in
CRL.A.NO.83/2019

Date :03/09/2019

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TA-06/09/2019



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