

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Twenty Fourth 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.12532 of 2019

IN CRL.A.NO.561 OF 2019

1 MADHESH @ RAJA
2 KALAIIVANI
3 PREMA

[PETITIONERS]

Vs

STATE REP BY
INSPECTOR OF POLICE,
NAGARASAMPATTI POLICE STATION,
KRISHNAGIRI DISTRICT.
CR.NO.192/2010.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.561/2019 on the file of the High Court, the High Court will be pleased to grant suspension of sentence passed in SC No.262/2016 on the file of the Learned Additional Sessions Judge, Krishnagiri District and enlarge the petitioners/appellantson bail, pending disposal of the above Criminal Appeal.[CRL.A.NO.561/2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.561/2019 on the file of the High Court and upon hearing the arguments of M/S.N.CHANDRASEKAR FOR R.RAJESHVIVEKANANTHAN, 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 petitioners have been arrayed as A1 to A3 in S.C.No.262 of 2016 on the file of Additional Sessions Judge, Krishnagiri for the major offence punishable under Section 302 r/w 34 IPC. The trial Court, by judgment dated 31.07.2019 convicted the petitioners 1 and 3/A1 and A3 for the offence punishable under Section 302 r/w 34 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.25,000/- each, in default, to undergo three months simple imprisonment, convicted A2 for the offence punishable under Section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.25,000/- in default to undergo three months simple imprisonment

and convicted the petitioners/A1 to A3 for the offence punishable under Section 506(ii) IPC and sentenced to undergo seven years rigorous imprisonment and to pay fine of Rs.10,000/- each, in default to undergo three months simple 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 first petitioner is the son, the second petitioner is the mother and the third petitioner is the daughter. Insofar as the first petitioner is concerned, perhaps considering the specific overt act, the learned counsel for the petitioner has not pressed the petition filed. Accordingly, **the petition stands dismissed as against the first petitioner/A1 is concerned.**

3. The case of the prosecution is that pursuant to the civil dispute over a land and on seeing the deceased and P.W.1 doing boomi pooja all the accused went to the place of occurrence and attacked them. A1, being the son of A2 attacked both the deceased with sickle. Insofar as A2 and A3, namely, petitioners 2 and 3 are concerned, the overt act attributed is that after A1 attacked the deceased, they took the sickle from him and cut the private part of the one of the deceased. P.W.1 and P.W.9 are stated to be the eye witnesses.

4. The learned counsel appearing for petitioners 2 and 3 would submit that P.W.9 is not an eye witness as could be seen from the evidence. The trial Court committed an error in not considering the evidence of P.W.13 and P.W.20 in the correct perspective. P.W.13 even in his chief examination has reiterated his recording in the post-mortem certificate that there was no injury in the private parts of the deceased as alleged by the prosecution. In the cross-examination also, he has reiterated the above said statement. P.W.20 who is the Investigating Officer has also stated that in the statement given by P.W.1 under Section 161 Cr.P.C, she has not stated anything about the attack of petitioners 2 and 3 in the private parts of the deceased. The trial Court, merely relied upon the photographs of the deceased taken after occurrence while rendering the conviction against the petitioners. Therefore, insofar as the petitioners 2 and 3 are concerned, this Court will have to consider the suspension of sentence petition.

5. The learned Additional Public Prosecutor appearing for the State would submit that the trial Court not only considered the evidence of P.Ws.1 and 9 but also took into consideration the photographs and the C.D., taken after the occurrence. As the photograph indicates blood stain, the trial Court accordingly rendered the conviction. Hence, the petition will have to be dismissed.

6. We find some force in the arguments made by the learned counsel appearing for the petitioners. We are concerned with the suspension of sentence of A2 and A3 along viz., petitioners 2 and 3. These two persons are mother and daughter. Admittedly, P.W.13 has deposed that at the time of conducting the post-mortem there was no injury in the private parts of the deceased. P.W.1 has not stated

anything about the specific overt act attributed by A2 and A3 in the statement given under Section 161 Cr.P.C. Though the said statement cannot be admissible in evidence, the same can be relied upon to contradict the case of the prosecution which the defence has accordingly done. P.W.20 has also admitted the fact that no such statement has been given by P.W.1. The trial Court, in our considered view, *prima facie*, is not correct in placing specific reliance upon the photographs as against the existence of the medical evidence. Though the medical evidence can be taken as an opinion, it takes a different role with respect to the existence of the injury. When the Doctor who did the post-mortem has opined that there was no injury, the Court cannot take umbrage under the ocular witness and render conviction. Thus, we find that there are arguable points available in the appeal. Further more, petitioners 2 and 3 are ladies, being the mother and daughter.

7.Considering the above and coupled with the period of incarceration of the petitioners, we are inclined to suspend the sentence in respect of petitioners 2 and 3. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that petitioners 2 and 3 executes a bond for a sum of Rs.10,000/- each (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the Additional Sessions Judge, Krishnagiri on further condition that petitioners 2 and 3 shall appear before the concerned Court on the first working day of every month at 10.00 a.m., pending appeal.

-sd/-

24/09/2019

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 ADDITIONAL SESSIONS JUDGE
KRISHNAGIRI

2 THE CHIEF JUDICIAL MAGISTRATE
KRISHNAGIRI[FOR INFORMATION]

3 THE SUPERINTENDENT,
CENTRAL PRISON,VELLORE DISTRICT

4 THE INSPECTOR OF POLICE,
NAGARASAMPATTI POLICE STATION,
<https://hcservices.ecourts.gov.in/hcservices/>
KRISHNAGIRI DISTRICT.

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5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

C.C. to M/S.R.RAJESHVIVEKANANTHAN Advocate on payment of
necessary charges

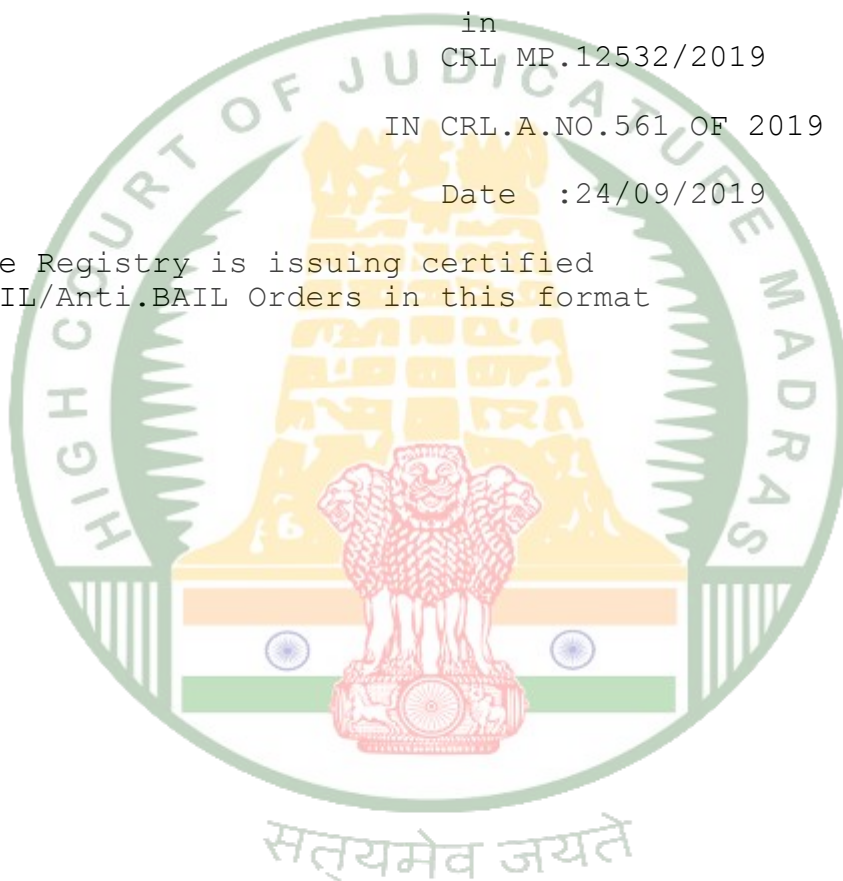
Order

in
CRL MP.12532/2019

IN CRL.A.NO.561 OF 2019

Date :24/09/2019

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
RD 24/09/2019



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