

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Twenty Second day of November 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.15239 of 2019

IN CRL.A.NO.735 of 2019

1 RAJESH @ THAJ [PETITIONERS]
2 BARCO @ BARGOV @ BUJJI

Vs

STATE REP. BY ITS [RESPONDENT]
THE INSPECTOR OF POLICE,
T-1, AMBATTUR POLICE STATION,
CHENNAI-600 053.
CR.NO.1286 OF 2013.

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 order that the execution of the sentence passed in S.C.No.223 of 2016 on the file of the Learned III Additional District and Sessions Judge, Tiruvallur at Poonamallee dated 30.07.2019 and enlarge him on bail pending disposal of the above Crl.A.No.735 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. P.PRINCE PREMKUMAR, 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 A3 and A4 in S.C.No. 223 of 2016 on the file of III Additional Sessions Judge, Tiruvallur @ Poonamallee. The trial Court, by judgment dated 30.07.2019 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.5,000/- each, in default, to undergo six months rigorous imprisonment. Seeking suspension of sentence imposed, the present petition has been filed.

2. The case of the prosecution is that one Venkatesan dashed his vehicle against P.W.11 pursuant to that a quarrel arose. P.W.11 has informed the same to P.W.2. Thereafter, P.W.2 and the deceased questioned Venkatesan. There was a quarrel between the parties. The accused persons including the petitioners who have been arrayed as A3 and A4 are stated to be the friends of Venkatesan. Thus, the for the above said prior motive, all the accused joined together, attacked the deceased and committed the murder. P.W.2 is the only eye witness.

3. The learned counsel appearing for the petitioners submitted that there is a contradiction in the evidence of P.W.2. Though he has submitted that there is a stab injury on the neck, the Doctor did find the same. Even as per the evidence P.W.2, the petitioners merely pushed the deceased and caught hold of him. It is the A1 who thrown the concrete slab on the deceased and thereafter A2 stabbed him. The evidence of P.W.2 is not trustworthy as he has also stated that he left the scene thereafter. There is a delay in receiving the FIR inasmuch as the Court is nearby the police station. Thus, the suspension of sentence will have to be granted to the petitioners.

4. The learned Additional Public Prosecutor appearing for the State submitted that the trial Court agreed with the evidence of P.W.2 and rendered conviction. There was also a recovery made pursuant to the confession statement given. The motive has also not been proved. Thus, this petition will have to be dismissed.

5. We do find there are sufficient points available in the appeal. The petitioners have been under incarceration from 30.07.2019 onwards. Venkatesan who picked up the quarrel with P.W.11 has not been examined. The overt act attributed against the petitioners as against A1 and A2 is that they pushed the deceased and then caught hold of him.

6. Considering the above, we are inclined to suspend the sentence. Accordingly, 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 the Judicial Magistrate I, Poonamallee, Chennai and on further condition that the petitioners shall stay at Trichy and report before the Town Police Station, Trichy daily at 10.00 a.m., until further orders.

-sd/-

22/11/2019

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 III ADDITIONAL SESSIONS JUDGE,
TIRUVALLUR @ POONAMALLEE.

2 THE JUDICIAL MAGISTRATE,
NO.I, POONAMALLEE, CHENNAI

3 THE CHIEF JUDICIAL MAGISTRATE
THIRUVALLUR. [FOR INFORMATION]

4 THE INSPECTOR OF POLICE,
T-1 AMBATTUR POLICE STATION,
CHENNAI-600 053.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE OFFICER INCHARGE,
TOWN POLICE STATION,
TRICHY.

7 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, (CONVICTION CELL)

+2 C.C. to M/S. P.PRINCE PREMKUMAR Advocate on payment of
necessary charges SR.NO.24066

Order
in
CRL MP.15239/2019
in
CRL.A.NO.735/2019

सत्यमेव जयते Date :22/11/2019

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