

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Eighteenth 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.15632 of 2019

IN CRL.A.NO.217 OF 2019

KALIYAMURTHY

[PETITIONER]

Vs

STATE THROUGH

[RESPONDENT]

INSPECTOR OF POLICE,
CUDDALORE OLD TOWN POLICE STATION,
CUDDALORE.
CR.NO.515/2015.

Petition praying that in the circumstances stated therein the High Court will be pleased to suspend the execution of sentence of the petitioner/A1 dated 14.03.2019 passed in S.C.No.130/2016 on the file of the Mahila Court, Cuddalore and the petitioner/appellant who is remanded to judicial custody after judgment, be released on bail pending disposal of the above Crl.Appeal No.217/2019. [CRL.MP.NO.15632/2019]

Order : This petition coming on for orders upon perusing the petition and upon hearing the arguments of M/S. V.LAKSHMANAN, Advocate for the petitioner and of MR.K.PRABAKAR ADDL. 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 first accused and convicted for life in S.C.No. 130 of 2016 on the file of the Mahila Court, Cuddalore. The trial Court, by judgment dated 14.03.2019 convicted the petitioner for the offence punishable under Sections 148, 294(b), 323 (2 counts), 302 r/w 149 and 506 (ii) IPC and for the offence punishable under Section 148 IPC, sentenced to undergo two years simple imprisonment and to pay a fine of Rs.500/-, in default, to undergo three months simple imprisonment and for the offence under Section 294(b) IPC, sentenced to undergo one month simple imprisonment and to pay a fine of Rs.500/-, in default, to undergo fifteen days simple imprisonment, for the offence punishable under Section 323 IPC (3 counts), sentenced to undergo three months simple

imprisonment (each count) and to pay a fine of Rs.500/- (each count), in default, to undergo 15 days simple imprisonment, for the offence punishable under Section 506(ii) IPC, sentenced to undergo two years simple imprisonment and to pay a fine of Rs.500/-, in default, to undergo three months simple imprisonment and for the offence punishable under Section 302 r/w 149 IPC, sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo two years simple imprisonment and ordered the sentences to run concurrently. Seeking suspension of sentence imposed, the present petition has been filed.

2. The case of the prosecution is that the petitioner along with A2 to A6 pursuant to the dispute which arose on the stagnation of the water, attacked the deceased and committed the offence. The specific overt act attributed against the petitioner is that he attacked the deceased with the iron pipe whereas A2 to A6 attacked him with the stones.

3. The learned counsel appearing for the petitioner submitted that insofar as A2 to A6 are concerned, this Court, has already suspended the sentence. In any case, the offence punishable under Section 302 IPC would not be made out and, therefore, the suspension will have to be granted to the petitioner.

4. The learned Additional Public Prosecutor appearing for the State submitted that the petitioner's overt act stands different from the others. Therefore, the same yardstick cannot be adopted. Thus, the petition will have to be dismissed.

5. The motive appears to be on the dispute which arose pursuant to the stagnation of water. The petitioner and the deceased were neighbours. *Prima facie*, we are of the view that even assuming the occurrence is true, the offence punishable under Section 302 IPC may not be made out. Considering the above, we are of the view that there are sufficient points available in the appeal. Further more, the petitioner has been under incarceration from 14.03.2019 onwards.

6. 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.II, Cuddalore and on further condition that the petitioner shall report before the concerned Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-

18/11/2019

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 THE MAHILA COURT,
CUDDALORE

2 THE JUDICIAL MAGISTRATE,
NO.II, CUDDALORE

3 THE CHIEF JUDICIAL MAGISTRATE
CUDALLORE [FOR INFORMATION]

3 THE CHIEF JUDICIAL MAGISTRATE
CUDALLORE [FOR INFORMATION]

4 THE INSPECTOR OF POLICE,
CUDDALORE OLD TOWN POLICE STATION,
CUDDALORE.

5 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE

+1 C.C. to V.LAKSHMANAN Advocate on payment of necessary
charges SR.NO. 23721

Order

in
CRL MP.15632/2019

IN CRL.A.NO.217 OF 2019

Date :18/11/2019

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