

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Twenty Seventh 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.17334 OF 2019

IN CRL.A.NO.561 OF 2019

MADHESH @ RAJA

[APPELLANT / ACCUSED]

Vs

STATE REP. BY

[RESPONDENT]

THE INSPECTOR OF POLICE,
NAGARASAMPATTI POLICE STATION,
KRISHNAGIRI DISTRICT.
CRIME NO.192 OF 2010

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.NO.561 OF 2019 on the file of the High Court, the High Court will be pleased to grant suspension of sentence passed in S.C.No.262 of 2016 on the file of the Learned Additional Sessions Judge, Krishnagiri District and enlarge the Petitioner/Appellant on bail, pending disposal of the above CRL.A.NO.561 OF 2019 [IN CRL.MP.NO.12532 OF 2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.NO.561 OF 2019 on the file of the High Court and upon hearing the arguments of M/S.R.RAJESH VIVEKANANTHAN, 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. 262 of 2016 on the file of Additional Sessions Judge, Krishnagiri. The trial Court, by judgment dated 31.07.2019 convicted the petitioner for the offence punishable under Sections 302 r/w 34 and 506(ii) IPC and for the offence punishable under Section 302 r/w 34 IPC sentenced to undergo life imprisonment and to pay a fine of Rs.25,000/-, in default, to undergo three months simple imprisonment and for the offence punishable under Section 506(ii) IPC sentenced to undergo seven years rigorous imprisonment and to

pay a fine of Rs.10,000/-, in default, to undergo three months simple imprisonment and ordered the sentences to run concurrently. Seeking suspension of sentence imposed, the present petition has been filed.

2. The learned counsel appearing for the petitioner submitted that this Court considered the case of A2 and A3 and suspended the sentence vide order dated 24.09.2019 in CrI.M.P.No.12532 of 2019 in CrI.A.No.561 of 2019. A copy of the same has also been furnished to us. Relevant portion of the said order reads as under:-

"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

3. Placing reliance upon the same, the learned counsel appearing for the petitioner submitted that P.W.9 could not have been an eye witness. There are material contradictions in the evidence of P.W.1. Even the Investigating Officer says that P.W.9 is not an eye witness. Thus, in the light of the discussion made above, this Court granted suspension of sentence in favour of A2 and A3, the petitioner also will have to extend the same benefit particularly when he has been under incarceration for more than two and half years even thereafter.

4. The learned Additional Public Prosecutor appearing for the State would submit that the petitioner stands on a different footing. The petitioner is the main accused as against A2 and A3. Thus, the petition will have to be dismissed.

5. Insofar as the evidence adduced on behalf of the prosecution, it is same as against all the accused persons. We may also find from the evidence of the Investigating Officer that the presence of P.W.9 who is stated to be an eye witness is somewhat doubtful. The evidence of P.W.1 has also been discussed by us while considering the suspension of sentence for A2 and A3. We do find sufficient points involved in the appeal to be agitated.

6. Considering the above and coupled with the period of incarceration, 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 Additional Sessions Judge, Krishnagiri 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/-

27/11/2019

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 ADDITIONAL SESSIONS JUDGE,
KRISHNAGIRI.

2 THE CHIEF JUDICIAL MAGISTRATE,
KRISHNAGIRI.

3 THE SUPERINTENDENT,
CENTRAL PRISON,
VELLORE DISTRICT.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE,
NAGARASAMPATTI POLICE STATION,
KRISHNAGIRI DISTRICT.

+1C.C. to M/S.R.RAJESH VIVEKANANTHAN Advocate on payment of
necessary charges SR NO.24424

Order

in
CRL MP.17334/2019
in
CRL.A.561/2019

Date :27/11/2019

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MK:28/11/2019

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