

IN THE HIGH COURT OF JUDICATURE AT MADRAS

( Criminal Jurisdiction )

Monday, the Fourth day of February Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M. SATHYANARAYANAN

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.16235 of 2018

IN CRL.A.NO.783 OF 2018

PANDI ALIAS DURAIPANDIAN

[ PETITIONER ]

Vs

STATE BY

[ RESPONDENT ]

INSPECTOR OF POLICE,  
ANURPARPALAYAM POLICE STATION,  
CR.NO.1817 OF 2008

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.783/2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed in S.C.No.164 of 2015 on the file of Learned II nd Additional District and Sessions Judge, Thiruppur dt 23.06.2017 and enlarge him on bail pending disposal of this Criminal Appeal.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.783/2018 on the file of the High Court and upon hearing the arguments of M/S.S.R.SUMATHY Advocate for the petitioner and of MR. C.IYYAPPARAJ, ADDL. PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The petitioner/appellant is the 2<sup>nd</sup> accused out of 2 accused and along with his brother [A-1], he has been charged and tried and the Trial Court had framed charges u/s.294-B, 302, 307 r/w 34 IPC as against A-1 and u/s.294[B], 302 r/w 34 and 307 IPC. The Trial Court, vide impugned judgment dated 23.06.2017, in SC.No.164/2015 had convicted and sentenced the accused as follows:-

| <b>Rank of the accused</b> | <b>Conviction under section</b> | <b>Sentence imposed</b>                                                                                                                                                            |
|----------------------------|---------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A-1                        | 294[B] IPC                      | 294[B] IPC - Acquitted                                                                                                                                                             |
|                            | 302 IPC                         | Sentenced to undergo imprisonment for life and to pay a fine of Rs.5000/- and in default, to undergo 1 year rigorous imprisonment for the offence u/s.302 IPC.                     |
|                            | 307 r/w 34 IPC                  | Sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5000/- and in default, to undergo 1 year rigorous imprisonment for the offence u/s.307 r/w 34 IPC. |
| A-2                        | 294[B] IPC                      | Sentenced to pay a fine of Rs.500/- and in default, to undergo one month simple imprisonment for the offence u/s.294[B] IPC                                                        |
|                            | 302 IPC                         | Sentenced to undergo imprisonment for life and to pay a fine of Rs.5000/- and in default, to undergo 1 year rigorous imprisonment for the offence u/s.302 IPC.                     |
|                            | 307 r/w 34 IPC                  | Sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5000/- and in default, to undergo 1 year rigorous imprisonment for the offence u/s.307 r/w 34 IPC. |

The Trial Court had ordered the sentences to run concurrently and also granted set-off u/s.428 Cr.P.C. Challenging the said conviction and sentence, the petitioner/appellant preferred CrI.A.No.783/2018 and pending appeal, he has filed the present petition seeking suspension of sentence.

2 The case of the prosecution is that A-2 was in requirement of money and they approached P.W.1 who was running a Finance company and on the basis of the security of the motorcycle, as decision has been taken by P.W.1 and his brother to advance the amount and A-2/petitioner herein stood as a guarantor and a sum of Rs.15,000/- was advanced out of which, the petitioner [A-2] was given Rs.6,500/-. The petitioner/A-2 initially, remitted some amount and thereafter, defaulted the payment of the amount and therefore, the motorcycle was seized by P.W.1 and infuriated by the same, A-2 along with his brother [A-1], viz., Narayanan @ Saravanan came to the house of P.W.1 at about 11.00 p.m. on 28.12.2008 and there was an altercation and P.W.1 was attacked by the petitioner/A-2 with a wooden log and on hearing the commotion, the brother of P.W.1, viz., Thirumoorthy, came out and he was attacked by A-1 and as a consequence, the deceased died of injuries and P.W.1 sustained grievous injuries. The prosecution had examined P.Ws.1 and 2 as eyewitnesses and P.W.1, in his cross-examination would state that immediately on attack, he became unconscious ; but he was very categorical that he and his brother were attacked by both the accused repeatedly.

3 The learned counsel for the petitioner would submit that the substantive sentence of imprisonment imposed against A-1 has been suspended by this Court vide order dated 07.09.2019 in Crl.MP.No.6423/2018 in Crl.A.No.265/2018 and since the petitioner/A-2 is similarly placed, the substantive sentence of imprisonment imposed on the petitioner, may be suspended.

4 *Per contra*, Mr.C.Iyyappa Raj, learned Additional Public Prosecutor appearing for the State would submit that since the injured eyewitness, P.W.1 had categorically deposed about the overt act and the sentence of imprisonment imposed against the petitioner need not be suspended and prays for dismissal of this petition.

5 This Court has suspended the sentence of imprisonment against A-1 for the reason that before P.W.6-Doctor, P.W.1 had deposed that three unknown persons had attacked. Be that as it may, in the light of the answer elicited in the cross-examination of P.W.1 that he was attacked by both accused and that he has also sustained grievous injuries and based upon the testimonies of the oral evidences with supporting scientific evidence, the Trial Court has reached the conclusion to convict the petitioner/A-2 and sentence as stated above. The points urged by the learned counsel for the petitioner/A-2 can be appreciated only during the course of hearing of this appeal. Therefore, this Court is not inclined to suspend the substantive sentence of imprisonment imposed against the petitioner/A-2.

6 Hence, the miscellaneous petition stands dismissed.

7 At this juncture, the learned counsel for the petitioner/A-2 prays for earlier disposal of the appeal. The Court heard the submission of Mr.C.Iyyappa Raj, learned Additional Public Prosecutor appearing for the State also.

8. The Registry is to accord priority and list the appeal at an early date.

-sd/-

04/02/2019

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 II ND ADDITIONAL DISTRICT  
AND SESSIONS JUDGE, THIRUPPUR

2 THE SUPERINTENDENT,  
CENTRAL PRISON, COIMBATORE

3 THE PUBLIC PROSECUTOR  
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,  
ANURPARPALAYAM POLICE STATION,

COPY TO:

1 THE SECTION OFFICER  
CRIMINAL SECTION,  
HIGH COURT, MADRAS

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

WEB COPY

Order

in

CRL MP.16235/2018

IN CRL.A.NO.783 OF 2018

Date :04/02/2019

From 7.2.2001 the Registry is issuing certified  
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RD 07/02/2019

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