

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Eighth 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 Nos.16986, 17326 & 17431 of 2018

IN Crl.A.NOS.815, 832 & 834 of 2018

1 VISWANATHAN

2 KALAIVANI

[PETITIONERS /
IN CRL.MP.NO.16986 OF 2018
IN CRL.A.No.815 OF 2018]

1 OOSI @ SOUNDARAJAN

2 GANGAI AMARAN

3 KARTHIK

4 ANBAZHAGAN

5 RAMASAMY

[PETITIONERS /
IN CRL.MP.NO.17326 OF 2018
IN CRL.A.No.832 OF 2018]

ARIVAZHAGAN

[PETITIONER /
IN CRL.MP.NO.17431 OF 2018
IN CRL.A.No.834 OF 2018]

Vs

THE STATE REP BY ITS,
THE INSPECTOR OF POLICE,
PUTHUR POLICE STATION,
KAATUMANARKOIL CIRCLE,
CUDDALORE DISTRICT.
CR.NO.109 OF 2012.

[RESPONDENT
IN CRL.MP.NO.16986,17326 OF 2018
IN CRL.A.NOS.815 & 832 OF 2018]

THE STATE REP BY ITS,
THE INSPECTOR OF POLICE,
T.PUTHUR POLICE STATION,
KAATUMANARKOIL CIRCLE,
CUDDALORE DISTRICT.
CR.NO.109 OF 2012.

[RESPONDENT /
IN CRL.MP.NO.17431 OF 2018
IN CRL.A.No.834 OF 2018]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.No.815, 832 & 834 of 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed in the Judgment dated 02.11.2018 against the Petitiones in S.C.No.154 of 2015 (on the fiel of the II Additional and Sessions Court, Chidambaram) and release the petitioners on bail. [IN CRL.MP.Nos.16986, 17326 & 17431 of 2018]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.815, 832 & 834 of 2018 on the file of the High Court and upon hearing the arguments of M/S.C.VIJAYAKUMAR, Advocate [IN CRL.MP.NO.16986 OF 2018] AND MR.S.SATHIA CHANDRAN ADVOCATE [IN CRL.MP.NO.17326 OF 2018] AND MR.D.ASHOK KUMAR ADVOCATE [IN CRL.MP.NO.17431 OF 2018] for the petitioners and of PUBLIC PROSECUTOR [IN ALL THE PETITIONS] on behalf of the Respondent the court made the following order:-

[Order of the Court was made by **M.NIRMAL KUMAR, J.**]

The petitioners are appellants in Crl.A.Nos.815, 832 and 834 of 2018 and they are accused in S.C.No.154 of 2015 on the file of the II Additional District and Sessions Court, Chidambaram, the Sessions Court, by Judgment dated 02.11.2018 convicted the petitioners for the following offences and sentenced them as under:

The 1st petitioner in Crl.M.P.No.17326 of 2018/A1 namely Oosi @ Soundarajan S/o Kaliyaperumal, was convicted U/s.148, 294(b), 324, 452, 427 and 302 r/w 109 of IPC and sentenced to undergo 6 months rigorous imprisonment U/s.148 of IPC, Rs.500/- fine U/s.294(b) of IPC and in default of payment of fine to undergo 1 month simple imprisonment, 1 year rigorous imprisonment U/s.324 of IPC and fine of Rs.500/- and in default of payment of fine to undergo 3 months simple imprisonment, 3 years rigorous imprisonment U/s.452 of IPC and a fine of Rs.1000/- and in default of payment of fine 6 month simple imprisonment, 6 months rigorous imprisonment U/s.427 of IPC and fine of Rs.500/- and in default of payment of fine to undergo 2 months simple imprisonment and U/s.302 of IPC life imprisonment and fine of Rs.2000/- and in default of payment of fine amount 1 year simple imprisonment.

2.The 2nd petitioner/A4 and the 3rd petitioner/A5 in Crl.M.P.No.17326 of 2018 namely Gangaiamaran S/o.Jayaraman and Karthik S/o.Mahalingam, were convicted U/s.148, 324, 452, 427 and 302 r/w 34 of IPC and sentenced to undergo 6 months rigorous imprisonment U/s.148 of IPC, 1 year rigorous imprisonment U/s.324 of IPC and fine of Rs.500/- and in default of payment of fine to undergo 3 months simple imprisonment, 3 years rigorous imprisonment U/s.452 of IPC and a fine of Rs.1000/- and in default of payment of fine 6 month simple imprisonment, 6 months rigorous imprisonment U/s.427 of IPC and fine of Rs.500/- and in default of payment of fine to undergo 2 months simple imprisonment and U/s.302 r/w 34 of IPC life imprisonment and fine of Rs.2000/- and in default of payment of fine amount 1 year simple imprisonment.

3.The 4th petitioner in Crl.M.P.No.17326 of 2018/A7 namely Anbazhagan S/o.Rangasamy, was convicted U/s.147, 452, 427 and 302 r/w 34 of IPC and sentenced to undergo 3 months rigorous imprisonment U/s.147 of IPC, 3 years rigorous imprisonment U/s.452

of IPC and a fine of Rs.1000/- and in default of payment of fine 6 month simple imprisonment, 6 month rigorous imprisonment U/s.427 of IPC and fine of Rs.500/- and in default of payment of fine to undergo 2 months simple imprisonment and U/s.302 r/w 34 of IPC life imprisonment and fine of Rs.2000/- and in default of payment of fine amount 1 year simple imprisonment.

4.The 5th petitioner in Crl.M.P.No.17326 of 2018/A9 namely Ramasamy S/o.Aiyakannu, was convicted U/s.147, 452, 427 and 302 r/w 34 of IPC and sentenced to undergo 3 months rigorous imprisonment U/s.147 of IPC, 3 years rigorous imprisonment U/s.452 of IPC and a fine of Rs.1000/- and in default of payment of fine 1 year simple imprisonment, 6 month rigorous imprisonment U/s.427 of IPC and fine of Rs.500/- and in default of payment of fine to undergo 2 months simple imprisonment and U/s.302 r/w 34 of IPC life imprisonment and fine of Rs.2000/- and in default of payment of fine amount 1 year simple imprisonment.

5.The 1st petitioner in Crl.M.P.No.16986 of 2018/A2 namely Viswanathan S/o.Ramaiyan was convicted U/s.148, 302 of IPC and sentenced to undergo 6 months rigorous imprisonment U/s.148 of IPC, U/s.302 of IPC life imprisonment and fine of Rs.2000/- and in default of payment of fine amount 1 year simple imprisonment.

6.The 2nd petitioner in Crl.M.P.No.16986 of 2018/A3 namely kalaivani W/o.Viswanathan was convicted U/s.148, 452, 427 and 302 of IPC and sentenced to undergo 6 months rigorous imprisonment U/s.148 of IPC, 3 years rigorous imprisonment U/s.452 of IPC and a fine of Rs.1000/- and in default of payment of fine 1 year simple imprisonment, 6 month rigorous imprisonment U/s.427 of IPC and fine of Rs.500/- and in default of payment of fine to undergo 2 months simple imprisonment and U/s.302 of IPC life imprisonment and fine of Rs.1000/- and in default of payment of fine amount 1 year simple imprisonment.

7.The petitioner in Crl.M.P.No.17431 of 2018/A6 namely Arivazhagan S/o. Kaliyan, was convicted U/s.147, 452, 427 and 302 r/w 34 of IPC and sentenced to undergo 3 months rigorous imprisonment U/s.147 of IPC, 3 years rigorous imprisonment U/s.452 of IPC and a fine of Rs.1000/- and in default of payment of impugned notice 6 month simple imprisonment, 6 month rigorous imprisonment U/s.427 of IPC and fine of Rs.500/- and in default of payment of fine to undergo 2 months simple imprisonment and U/s.302 r/w 34 of IPC life imprisonment fine of Rs.2000/- and in default of payment of fine amount 1 year simple imprisonment.

8.The charge against the 8th accused Arivazhagan S/o. Palanivel abated, as he died during the course of trial.

9.The case of the prosecution is that all the accused due to election enmity assembled in front of the first row house of the deceased Pudurajan with dangerous weapons on 27.06.2012 at 10.00 p.m., in Lakshmikudi Village and while the deceased Pudurajan and witnesses PW1 to PW5 and one Chinnadurai were chatting in front of the first row house of deceased Pudurajan, A1 Oosi @ Soundarajan shouted telling that the family of Pudurajan who did not vote for Viswanathan to be set on fire and abused in filthy language and asked others to attack and hence, the 2nd accused Viswanathan using "Veecharavual" attacked Pudurajan and caused cut injury on his head and shoulder and the 3rd accused Kalaivani using "Velkambi" stabbed the deceased on his left neck and caused his death, further when the injured Chinnadurai had attempted to prevent the attack and save his brother Pudurajan, A1 cut on his head by knife and A4, Gangai Amaran attacked him with a iron pipe on right shoulder and caused simple injuries, Karthik A5 stabbed PW3 Rani using "Velkambi" on her right cheek, Anbazhagan A7 caused cut injury with knife on PW4 Usharani on her right leg and caused simple injuries. Further the accused trespassed into the house of PW1 Ramesh and damaged the T.V. and other articles.

10.The case of the defence is that on 27.06.2012 at about 08.00 p.m. there was a wordy quarrel between PW1 and the villagers, thereafter at about 09.00 p.m. Arivazhagan/A6 was returning to his home from grocery shop, he was attacked by PW1, the deceased and two other persons in which A6 sustained injury on his head, at that time there was no electricity supply, there was rioting in the village and in the darkness, the deceased Pudurajan while running away from the place toppled and fell inside the pond and sustained injuries and died. At the instigation of one Nagarajan, who had enjoyed the office by election, who subsequently lost the election at the hands of the accused have been falsely implicated in this case.

11.The contention of the petitioners is that the complaint in this case is a fabricated one, based on which the FIR is registered. There has been a long delay in lodging the complaint as well as sending the same to the Court. Further the complaint was prepared at the instance of the said Nagarajan in the office of the Village Administrative Officer, which has been spoken to by PW12, the Sub-Inspector of Police, who received the complaint, Ex.P1 and registered FIR, Ex.P14. Further, PW12 have spoken to about the same, through him Ex.D1 has been marked. Further it is the certain case of the prosecution that the occurrence had taken place between 10.00 p.m. and 11.00 p.m. on the fateful day, the occurrence had been witnessed by PW1 to PW5 with the help of the light is false on the ground that during that time there was official power cut in the locality and the same was proved through DW3. DW3 one Natarajan, Assistant Engineer of Tamil Nadu Electricity Board Kattumannarkoil and through him Exs.D6 to D9 have been marked. From the available evidence and materials, it is established that PW1 to PW5 could not

at all be present at the time of occurrence and the occurrence had not taken place as spoken to by them. Further in this case, the medical evidence and ocular evidence are contrary to each other.

12.As per the complaint, it is stated that A1 attacked one Chinnadurai on his head with knife and A4 also attacked him by iron pipe. As per Accident Register Ex.P15, the alleged assault was by one known person. The Doctor's evidence is that there was no cut injury on the head nor a cut injury on the shoulder. Further the time of occurrence has been mentioned as 08.00 p.m. The said Chinnadurai died before filing the charge sheet. Further it is stated that A2 by using Veecharuval had attacked the deceased on the back side of the head and A3 inflicted stab injury on the left side of the neck. The postmortem report shows that there is no cut injuries on the head of the deceased. A5 attacked PW3 on her cheek and mouth and as per Accident Register Ex.P16, she was attacked by ten known persons by crow-bar at 08.00 p.m. and the Doctor's evidence shows that she had swelling injury. As regards A6, who is said to have attacked A5 by using iron pipe. There is no medical evidence to substantiate the same. A7 is said to have attacked and cut the leg of PW4 with knife. It is seen from the Accident Register Ex.P17, she was attacked by ten known persons with knife and wooden log and the Doctor's evidence is that there is no cut injury on PW4. As regards A9, he is said to have chased PW1 with knife. Further caused cut injury on the right leg of PW4. Thus, it was submitted that the entire case is a motivated one. A3 in this case has been elected as President of Panchayat and the defeated candidate is Nagarajan's wife Sumathi. Hence Nagarajan and his men planned to cause rioting in the village to implicate the petitioners as accused in this case. Further A2, A3 and Nagarajan and his wife belong to different political parties.

13.It is to be seen that third accused won the local body election and there is no need for any motive against the deceased's family. The case is that the deceased and his son PW1 had worked against A3, during the month of October, 2011 panchayat election was held and seven month after the election on 27.06.2012, the said attack is said to have been carried out, which is unbelievable, it is nothing but a imaginary story of the prosecution. In fact, several persons voted against A3 and there is no rhyme or reason to pick and choose, when there are several persons, who voted against them.

14.Further it was argued that the injury sustained by A6 was not explained by the prosecution. As it could be seen that A6 was assaulted by PW1, deceased and two others at about 09.00 p.m. The eye witnesses PW1 to PW5 are close relatives, further, the occurrence said to have taken place in the centre of the village and no independent witnesses have been examined.

15. The accused examined defence witnesses DW1 to DW3. DW1, Casualty Medical Doctor of Annamalai University Hospital and through him Ex.D2, Accident Register and Ex.D3, Wound Certificate of A6 have been marked. It is seen that A6 was attacked at 09.00 p.m. on 27.06.2012 and thereafter, A6 fainted and gone to the hospital and hence he could not have been present on the alleged date of occurrence at 10.00 p.m. to 11.00 p.m. Suganthi, wife of A7 is examined as DW2 to prove that on 27.06.2012, A7 was inside the house during the time of alleged occurrence and there was no electricity supply. DW3 is the Assistant Engineer of Tamil Nadu Electricity Board, through him Ex.D6 to Ex.D9 have been marked. To prove the fact that on 27.06.2012 during the relevant point of time, there was no power supply. Further, it could be seen that the whitener has been used to make corrections in the Mahazar and Form-95 and hence, the alleged seizure and recovery could not said to have been made in the manner as put forth. The accused have got arguable points and it is a fabricated case, hence they sought suspension of sentence/bail.

16. The contention of the learned Additional Public Prosecutor is that PW1 to PW5 are the eye witnesses to the occurrence, merely because they are closely related. On the sole ground alone their evidences could not be disbelieved. Further all the family members of the deceased were sitting outside of their houses. It is the accused, who had come to the house of the deceased and his family and attacked them. Further, the categorical evidence of the witnesses are that there was a light available at that point of time. The accused are known to the witnesses and there can be no difficulty in identifying the accused. They are the villagers used to such kind of situation. Hence, the identification of the accused could not be doubted. Further other than the deceased, the witnesses are injured witnesses, who had sustained injuries during the attack. There is a strong motive for the accused to attack the deceased and his family members. The weapons used by each of the accused in the occurrence have been clearly spoken to by the witnesses and in fact, the brother of the deceased, who had sustained injury had passed away during the trial. The recovery have been made on the arrest of the accused and the weapons have been identified by the witnesses and their evidences inspired confidence being rustic villagers. It is natural that there ought to be some contradictions. These contradictions are natural and lend credence to the fact that the witnesses are speaking the truth. Further, as regard the shut down of the power, DW3 had admitted in his evidence based on the Exs.D6 to D9. He could not be certain that at what point of time there was stoppage of electricity on the fateful day.

17. Further the Postmortem Doctor PW8 Dr.Kumaran in his evidence would prove the fact that vide postmortem report Ex.P9 that the deceased would have appeared to have died of due to hypovolume shock due to bleeding due to injury of major vessel in left neck and left lung injury. Further it is to be seen that the profused bleeding

has occurred because of the blood vessels viz., arteries and capillaries have been deeply cut and further he had also deposed that the injuries could have been caused by the material objects. Further it is stated that the Court below on analysing the evidence and on appreciation of the evidences and the the materials produced have rightly convicted the accused and the accused have conspired joined together and committed a cold blooded murder and hence prayed that there is no glaring infirmity entitling the petitioners for bail.

18. Considering the rival submissions and on perusal of the materials, it is seen that the deceased has been attacked by the deadly weapons and he had sustained injuries on his head, shoulder, stab and cut injury on the right neck and he had ran for his life and asking his son PW1 to run away to save his life, since the accused were determined to finish of the deceased and his son for the reasons that they both had actively worked in favour of A3 in the panchayat election. The brother of the deceased Chinnadurai, who had intervened was also attacked. The other female members of the deceased family were attacked and they had to run away to save themselves. Further the attack preceded by some altercation and hence, the identification of the accused by the witnesses would not be faulted upon, there was sufficient light. The name of the accused are found in complaint, inquest and have been identified by the witnesses during trial.

19. The contention of the petitioners is that the deceased had ran away, fell down and due to that fall he died is a far fetched one. On considering the stab and cut of the arteries and capillaries and profused bleeding of blood. The medical evidences is also on the same line. There might be some minor contradictions as could be seen from the occurrence is of the year 2012 and the sessions case is of the year 2015 and the trial was allowed to be completed only in the year 2018. The witnesses have been examined nearly after five years of the occurrence. The chief examination of PW1 to PW5 have taken place on 23.10.2017 and the cross examination have not been done then and there. Further the Lower Court had analysed the evidence and given a categorical finding as regard the light factor and about the corrections.

20. Further on perusal of Ex.D3, the treatment certificate of A6, it is seen that he had gone to the Annamalai University, Rajah Muthiah Medical College Hospital, on 28.06.2012 at about 04.00 a.m. And the treatment was given upto 05.30 a.m. Hence, it could not be stated that PW1, the deceased and two others had attacked him on 27.06.2012, prior to the above occurrence.

21. Further as regards the evidence of PW12, the Lower Court had given a categorical finding that since PW12 had retired from service, he has been made to speak false-hood. His evidence does

not inspire confidence. He deposed against his prior statement to facilitate the accused and the Lower Court had rightly rejected the evidence of PW12. It could not be the lost site that the accused have been successfully dragging the case from the year 2012, at the stage of committal and during trial in the Sessions Court case of the year 2015 Judgment was rendered only in the year 2018.

22. In view of the above and on perusal of the materials produced and of the Lower Court Judgment, this Court feels that the points urged on behalf of the petitioners/appellants can be adjudicated at the time of final hearing of the appeals and that apart in the light of above facts and circumstances, suspension of sentence of imprisonment cannot be granted.

23. Accordingly, these petitions are dismissed. No costs.

-sd/-
08/02/2019

This order, on being produced, be punctually observed and carried into execution by all concerned

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Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE II ADDITIONAL DISTRICT AND
SESSIONS COURT, CHIDAMBARAM.

2 THE INSPECTOR OF POLICE,
PUTHUR POLICE STATION,
KAATUMANARKOIL CIRCLE,
CUDDALORE DISTRICT.

3 THE INSPECTOR OF POLICE,
T.PUTHUR POLICE STATION,
KAATUMANARKOIL CIRCLE,
CUDDALORE DISTRICT.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE.

6 THE SUPRINTENDENT,
CENTRAL PRISON FOR WOMEN,
VELLORE.

+1C.C. to M/S.C.VIJAYAKUMAR Advocate on payment of necessary charges in SR.NO. 2870

+1C.C. to M/S.S.SATHIYA CHANDRAN Advocate on payment of necessary charges in SR.NO.2904

+1C.C. to M/S.D.ASHOK KUMAR Advocate on payment of necessary charges in SR.NO. 2933

Order

in

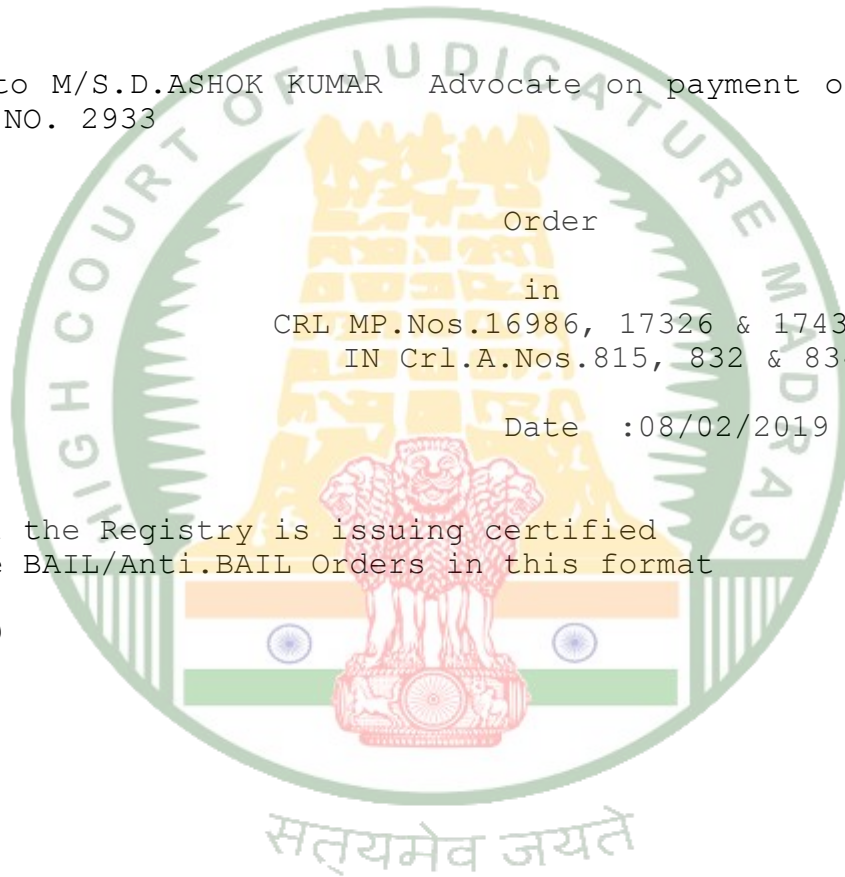
CRL MP.Nos.16986, 17326 & 17431 of 2018

IN Crl.A.Nos.815, 832 & 834 of 2018

Date :08/02/2019

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