

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Eleventh day of March Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice P. RAJAMANICKAM

CRIMINAL MISCELLANEOUS PETITION No.1423 of 2020

IN CRL.A.NO.823 OF 2018

KANNAN

[PETITIONER]

Vs

THE STATE BY

[RESPONDENT]

INSPECTOR OF POLICE,
DHARMAPURI POLICE STATION,
DHARMAPURI DISTRICT,
CRIME NO.294/2014.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.NO.823 of 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner by the judgment dated 1.2.2017 in S.C.No.144/2015 on the file of the Additional District and Sessions Court, Dharmapuri convicting the appellant and sentenced to undergo six years imprisonment and to pay a fine of Rs.1,000/- in /f to undergo 10 months R.I under sec.304(Part I) I.P.C, pending disposal of the above Crl.A.NO.823 of 2018.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.NO.823 of 2018 on the file of the High Court and upon hearing the arguments of M/S. I.C.VASUDEVAN, Advocate for the petitioner and of MR. T.SHUNMUGARAJESWARAN, Govt. Advocate O/O PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

This Appeal has been filed by the Appellant/Accused against the Judgment of conviction and sentence passed by the Additional District and Sessions Judge, Dharmapuri in S.C. No. 144 of 2015 dated 01.02.2017.

2. The case of the prosecution is that the Appellant/Accused and the deceased Peruma married 20 years back and Appellant/Accused often consumed liquor and beat his wife. Hence, the deceased Peruma stayed at her mother's house and worked at Natarajan's Tamarind Mandy. Two weeks before the occurrence, the Appellant/Accused quarrelled with the deceased Peruma and the deceased Peruma refused to accompany the Appellant/Accused. On 24.04.2014 at 2.30 p.m., the Appellant/Accused took the knife and went to Tamarind Mandy and when the deceased Peruma was working there, the Appellant/Accused stabbed on her right side back and chin and caused death, and when the deceased Peruma's

mother, viz., Lakshmi (P.W.-1), interfered and tried to save the deceased Peruma, the Appellant/Accused stabbed her also on her head with an intention to commit murder, and hence, the Appellant/Accused is liable to be punished for the offences punishable under Sections 302 and 307 of I.P.C.

3. The Trial Court, after full trial, acquitted the Appellant/Accused for the offences under Sections 302 and 307 of I.P.C. However, it convicted the Appellant/Accused under Section 304 (1) of I.P.C. and sentenced him to undergo 6 years rigorous imprisonment and also to pay a fine of Rs.1,000/- (Rupees Thousand only) in default to undergo 10 months rigorous imprisonment, and also ordered to give set off under Section 428 of Cr.P.C. the period of detention already undergone. Aggrieved by the same, the Appellant/Accused has filed the present Appeal.

4. The learned Counsel for the Appellant/Accused has submitted that the Trial Court has found that it was only P.W.-1, who brought M.O.1 Knife with an intention to attack the Appellant/Accused, and on seeing the same, the Appellant/Accused has snatched the said knife from P.W.-1, and in the said scuffle, the P.W.-1 and the deceased sustained injuries. He further submitted that the Trial Court has held that the Appellant/Accused has no intention to cause injury to anyone and also found that the P.W.-1 was the aggressor, and only on that reason, the Trial Court has acquitted the Appellant/Accused for the offence under Section 307 of I.P.C. He further submitted that since the Trial Court has held that the P.W.-1 was the aggressor, it ought not to have convicted the Appellant/Accused under Section 304 (i) of I.P.C. He further submitted that there are material contradictions in the evidence of the prosecution witnesses. He further submitted that there is no possibility of taking up the Appeal in the near future, and the Appellant/Accused is having arguable points in the Appeal and he is having chance of success in the Appeal, and hence he prayed to suspend the sentence.

5. Per contra, learned Government Advocate (Criminal Side) appearing for the Respondent has submitted that the P.W.-1 is the injured person and she has categorically deposed before the Trial Court that the Appellant/Accused has attacked the deceased and also herself. He further submitted that the P.W.-1 denied the suggestion put by the Appellant/Accused that she only brought the M.O.1 knife with an intention to attack the Appellant/Accused. He further submitted that the Doctor's evidence also would show that injuries sustained by the deceased and the P.W.-1 could not have happened accidentally. He further submitted that taking into consideration all the evidence adduced by the prosecution, the Trial Court has rightly convicted the Appellant/Accused under Section 304(i) of I.P.C., and therefore, he opposed the suspension of sentence.

6. Taking into consideration of the submissions made by the learned Counsel for the Appellant/Accused that the Trial Court has recorded a finding that there is no intention on the part of the Appellant/Accused to cause any bodily injury to anybody and also it has recorded that the P.W.-1 was the aggressor and she only brought

M.O.1 knife to the scene of occurrence and also the fact that the Petitioner is in custody for the past 3 years and also there are material contradictions in the evidence of the prosecution witnesses, this Court is inclined to suspend the sentence alone by imposing the following conditions:-

- i. The Appellant/Accused shall deposit a sum of Rs.1,50,000/- (Rupees One Lakh Fifth Thousand Only) to the credit of S.C. No. 144 of 2015 before the Trial Court, on or before 26.03.2020;
- ii. On such deposit being made, the Trial Court shall re-deposit the said amount in a Fixed Deposit Account, in any one of the Nationalized Banks, renewable thereafter periodically. the disbursal of this amount shall be decided at the culmination of the Appeal;
- iii. Thereafter, the Appellant/Accused is ordered to be released on bail, on his executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties of whom, one should be blood relative, each for a like sum to the satisfaction of the learned Additional District and Sessions Judge, Dharmapuri;
- iv. The Appellant/Accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities;
- v. The Appellant/Accused shall appear before the Trial Court on the first working day of every month at 10.30 a.m., until the disposal of the Appeal, and if he is not able to appear before the Trial Court on any day, due to unavoidable circumstances, he shall make arrangements to file an application under Section 317 of Cr.P.C. and shall appear before the Trial Court. Such an application shall not be entertained often; and सत्यमेव जयते
- vi. On the failure of the Appellant/Accused, depositing the said amount, it is open to the Trial Court to commit the Appellant/Accused into custody for undergoing the sentence.

-sd/-

11/03/2020

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 DISTRICT AND
SESSIONS JUDGE, DHARMAPURAI

2 THE SUPERINTENDENT,
CENTRAL JAIL, VELLORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 INSPECTOR OF POLICE,
DHARMAPURI POLICE STATION,
DHARMAPURI DISTRICT.

C.C. to M/S. I.C.VASUDEVAN Advocate on payment of necessary
charges Sr.4831

Order

in
CRL MP.1423/2020

IN CRL.A.NO.823 OF 2018

Date :11/03/2020

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format

RVR 13/03/2020

सत्यमेव जयते

WEB COPY