

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH

AND

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

Crl.M.P. No. 1797 of 2020

in Crl.A. No. 91 of 2020

1.Chinna Thimman
2.Mallappa

....Petitioners

Vs.

State represented by
The Inspector of Police,
Denkanikottai Police Station,
Krishnagiri District
(Crime No. 427 of 2015)

...Respondent

Prayer: Petition filed under Section 389(1) of Cr PC to suspend the sentence of imprisonment imposed in the judgement dated 09.12.2019 made in S.C.No. 15 of 2018 on the file of the Additional District and Sessions Court, Hosur, Krishnagiri District and enlarge the petitioners on bail pending disposal of the above criminal appeal.

For Petitioners : Mr.R. Balaguruswamy

For Respondent : Mr.K.Prabhakar,
Addl. Public Prosecutor

ORDER

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

The petitioners have been arrayed as A1 and A2 in S.C.No. 15 of 2018 on the file of Additional District and Sessions Judge, Hosur, Krishnagiri District. The trial Court by judgment dated 09.12.2019 convicted the 1st petitioner for the offence punishable under Section 25(1B)(a) of Arms Act, 1959 and 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/- , in default, to undergo six months simple imprisonment for the offence under Section 302 IPC and for the offence under Section 25(1B)(a) of the Arms Act, the 1st petitioner was sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.500/-, in default, to undergo three months simple imprisonment. As far as the 2nd petitioner is concerned, he was convicted for the offence punishable under Section 25(1B) (a) of the

Arms Act, 1959, 302 r/w 109 IPC and 506 (ii) IPC r/w Section 25(1B) (a) of Arms Act, 1959. For the offence under Section 25(1B)(a) of the Arms Act, the 2nd petitioner was sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.500/- carrying a default sentence of three months simple imprisonment; for the offence under Section 302 r/w 109 IPC, he was sentenced to undergo life imprisonment together with a fine of Rs.1000/-, in default, to undergo six months simple imprisonment and for the offence under Section 506(ii) IPC r/w 25(1B)(a) of the Arms Act, 1959, he was sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs. 500/-, in default to undergo three months simple imprisonment. The sentences were directed to run concurrently. Seeking suspension of sentence imposed, the present petition has been filed.

2. The case of the prosecution is that P.W.1 was having an affair with the 1st petitioner and thereafter, with the deceased. There was a money transaction between the 2nd petitioner and the deceased. On the date of occurrence, both the petitioners went to the residence of the deceased and attacked him with country made gun and committed the offence. The occurrence was on 31.07.2015 and the deceased died on 12.08.2015.

3. Learned counsel appearing for the petitioners submitted that the only eye witness was P.W.1, who turned hostile. The Trial Court has wrongly placed reliance upon the evidence of P.W.13 and that of the Doctor. The deceased was not given proper treatment resulting in his death. There was a considerable delay in performing the surgery. The statement of the deceased itself was to the effect that the petitioners attacked him with a reaper stick, before the Doctor, who treated him. The 1st petitioner is aged about 62 years and the 2nd petitioner is aged 70 years. The petitioners have been under incarceration for nearly one year. Hence, the sentence will have to be suspended.

4. Learned Additional Public Prosecutor appearing for the State submitted that though P.W.1 turned hostile, the Trial Court rightly convicted the petitioners pursuant to the recovery coupled with the evidence of P.W.13 and P.W.s 4 to 6. Therefore, the present petition will have to be dismissed.

5. The petitioners have been under incarceration for nearly one year. The 1st petitioner is stated to be 62 years old and the 2nd petitioner is 70 years old. Originally, the case was registered under Section 307 IPC and thereafter, it was altered to Section 302 IPC, after the death of the deceased. The surgery was performed on the deceased after initial treatment. The occurrence was on 31.07.2015 and the deceased died on 12.08.2015. the surgery performed on the deceased belatedly was not successful. Thus, considering the above, we do find that there are arguable points available in the appeal. Therefore, we are inclined to suspend the sentence.

is suspended on condition that each of the petitioners 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 District Munsif cum Judicial Magistrate, Denkanikottai and on further condition that the petitioners shall report before the concerned Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-
07/12/2020

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 COURT,
HOSUR, KRISHNAGIRI DISTRICT.

2 THE DISTRICT MUNSIF CUM
JUDICIAL MAGISTRATE, DENKANIKOTTAI

3 THE CHIEF JUDICIAL MAGISTRATE
KRISHNAGIRI. [FOR INFORMATION]

4 THE INSPECTOR OF POLICE,
DENKANIKOTTAI POLICE STATION,
KRISHNAGIRI DISTRICT.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM.

+2 C.C. to M/S.R.BALAGURU SWAMY Advocate on payment of
necessary charges SR.NO.7928

+2 C.C. to M/S. K.DAVIT Advocate on payment of necessary
charges SR.NO.7929

Order
in
CRL MP.1797/2020
in CRL.A.91/2020
Date :07/12/2020

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