

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Nineteenth day of March Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice P. RAJAMANICKAM

CRIMINAL MISCELLANEOUS PETITION No.2743 of 2020

IN CRL.A.NO.146 OF 2020

MOHAMED MUSTHAFA

[PETITIONER / APPELLANT /
ACCUSED]

Vs

STATE BY
THE INSPECTOR OF POLICE,
B-1, BAZAAR POLICE STATION,
COIMBATORE.
CR.NO.577/2017

[RESPONDENT / RESPONDENT /
COMPLAINANT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.No.146/2020 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed against the petitioner on 17.02.2020 in S.C.No.7/2018 on the file of the V Additional District and Sessions Court, Coimbatore and release the petitioner on bail till the disposal of the Crl.A.No.146/2020.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.146/2020 on the file of the High Court and upon hearing the arguments of M/S.P.PUGALENTHI, Advocate for the petitioner and of M/S.T.SHUNMUGARAJESWARAN, GOVERNMENT ADVOCATE O/O.PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

The Accused has filed the Appeal against the Judgment of conviction and sentence passed by the V Additional District and Sessions Judge, Coimbatore in S.C. No. 7 of 2018 dated 17.02.2020, and also filed this Petition to suspend the sentence awarded by the Trial Court.

2. The case of the prosecution is that the Appellant/Accused got electricity connection to his house, and subsequently, it was found that the wires were in a damaged condition, and hence, the Tamil Nadu Electricity Board (TNEB) has disconnected the said service connection. Thereafter, instead of replacing the said wires and requesting the TNEB to restore the service connection, he unauthorizedly took electricity from the house of one Amsa by using damaged silk wire. He tied the said silk wire with an iron pole and when the deceased persons, viz., Salman and Banu, came into contact with the said iron pole, they got electric shock and died, and hence, the Appellant/Accused is liable to be punished under Section 304(I) of I.P.C. (2 counts).

3. The Trial Court, after full trial, found the Appellant/Accused guilty under Section 304(II) of I.P.C. (2 counts) and sentenced him to undergo 10 years rigorous imprisonment and to pay a fine of Rs.5,000/- (Rupees Five Thousand only) in default to undergo simple imprisonment for 2 months for each count. It has also ordered that both the sentence shall run concurrently, and also gave set off under Section 428 of Cr.P.C. with regard to the period already undergone by the Appellant/Accused.

4. Aggrieved by the aforesaid Judgment of conviction and sentence, the Appellant/Accused has filed the present Appeal.

5. The learned Counsel for the Appellant/Accused has submitted that even if the allegations made by the prosecution are taken as true at the face value, the Appellant/Accused could be convicted only for the offence under Section 304-A of I.P.C. He further submitted that the offence under Section 304-A of I.P.C. is a bailable one. He further submitted that the Appellant/Accused is in custody from the date of Judgment, i.e. 17.02.2020, and further, the Appellant/Accused has paid the fine before the Trial Court. He further submitted the Appellant/Accused is having a chance of success in the Appeal and there is no possibility of taking up of the Appeal in the near future, and therefore, he prayed to suspend the sentence.

6. Per contra, the learned Government Advocate (Criminal Side) appearing for the Respondent has submitted that the act of the Appellant/Accused would clearly attract the provisions of Section 304 (II) of I.P.C., and taking into consideration of the said fact, the Trial Court has rightly convicted the Appellant/Accused under Section 304(II) of I.P.C., and therefore, he strongly opposed for suspending the sentence.

7. Taking into consideration of the submissions made by the learned Counsel for the Appellant/Accused that the allegations made by the prosecution, at the most may attract Section 304-A of I.P.C. only, and also the fact that the Appellant/Accused is in custody for the past 1 month and also the fact that the Appellant/Accused has paid fine before the Trial Court, this Court is inclined to suspend the sentence of the Appellant/Accused by imposing the following conditions:-

(i) that the Appellant/Accused shall deposit a sum of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) towards interim compensation before the Trial Court, and on such deposit, the Trial Court is directed to release the Appellant/Accused 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 V Additional District and Sessions Judge, Coimbatore;

(ii) that the Trial Court is directed to disburse the said amount to the legal heirs of the deceased persons proportionately;

(iii) that 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;

(iv) that 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

(v) 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/-

19/03/2020

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 V ADDITIONAL DISTRICT
AND SESSIONS COURT, COIMBATORE.

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
B-1, BAZAAR POLICE STATION,
COIMBATORE.

+1 C.C. to M/S.P.PUGALENTHI Advocate on payment of necessary charges SR.No.5433

Order

in

CRL MP.2743/2020

in

CRL.A.146/2020

Date :19/03/2020