

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

and

The Hon'ble Mr. Justice D.KRISHNAKUMAR

CRL.MP. No.4013 of 2020

in CRL.A.No.235 of 2020

1.K.Madheshwaran
2.Perumal
3.Selvam

.... Petitioners

-vs-

State by
The Inspector of Police,
Sooramangalam Police Station,
Salem District.

.... Respondent

Criminal Miscellaneous Petition filed under Sections 389(1) and (2) of Criminal Procedure Code, to suspend the sentence imposed in the judgment dated 26.02.2020 in S.C.No.113 of 2016 on the file of the II Additional District and Sessions Judge, Salem and enlarge the petitioners on bail pending disposal of the Criminal Appeal.

For Petitioners : Mr.A.Thiyagarajan

For Respondent : Ms.M.Prabhavathi,
Addl. Public Prosecutor

ORDER

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

The petitioners have been arrayed as A1 to A3 in S.C.No. 113 of 2016 on the file of II Additional District and Sessions Judge, Salem, for the offence punishable under Sections 302 and 302 r/w 34 IPC. The trial Court, by judgment dated 26.02.2020, convicted petitioners 1 and 2 for the offence punishable under Section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/- in default, to undergo one year simple imprisonment for

one year and convicted the third petitioner for the offence punishable under Section 302 r/w 34 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for a period of one year. Seeking to suspend the sentence, the present petition has been filed.

2.The case of the prosecution is that the first petitioner was the tenant of the deceased. After vacating the premises in which he was a tenant, he asked for the return of the advance amount, which was not given to him by the deceased. A complaint was also given by the first petitioner in this regard. However, despite the same, the deceased did not give back the money.

3.The petitioners along with other three accused went to the place of the deceased and committed the offence. The first petitioner attacked the deceased with the axe on the back of the head. The second petitioner also attacked with wooden log and iron rod.

4.The trial Court convicted the petitioners alone while acquitting A4 to A6. However, the petitioners have been acquitted for the offence under Sections 148 and 307 IPC while rendering conviction for the offence under Section 302 IPC.

5.Learned counsel appearing for the petitioners submitted that there is undue delay in giving the FIR. There is a material contradiction between the evidence of P.Ws1, 2 and 3 among themselves. They are interested witnesses. The trial Court has not considered the relevant materials in the correct perspective. Therefore, the petition seeking suspension of sentence will have to be allowed.

6.Learned Additional Public Prosecutor appearing for the State submitted that the first petitioner is an eye witness though the son of the deceased. The contradictions, if any, are not material in nature. All the petitioners jointly attacked the deceased and hence this petition will have to be dismissed.

7.Learned counsel appearing for the petitioners submitted that insofar as A1 is concerned, the petition may be dismissed as not pressed with liberty to file a fresh one at a later point of time. The said submission made by the learned counsel appearing for the petitioners stands recorded and the petition stands dismissed as not pressed insofar as A1/first petitioner is concerned.

8.We do find from the evidence available that the overt act attributed against petitioners 2 and 3 are on a different footing. They attacked the deceased on head and the grandfather P.W.1 and the death was due to the injury caused by A1. It is A1 who had prior motive against the deceased.

9.Thus, in the light of the above coupled with the period of incarceration, we are inclined to suspend the sentence insofar as petitioners 2 and 3 are concerned. Accordingly, the substantive sentence of imprisonment alone is suspended insofar as petitioners 2 and 3 are concerned, on condition that petitioners 2 and 3 execute own bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each to the satisfaction of the The Superintendent of Prison, Central Prison, Coimbatore and on further condition that petitioners 2 and 3 shall report before the concerned Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-

29/06/2020

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 JUDICIAL MAGISTRATE, NO. II, SALEM.

2 THE II ADDITIONAL DISTRICT AND
SESSIONS JUDGE, SALEM.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 INSPECTOR OF POLICE,
SOORAMANGALAM POLICE STATION,
SALEM DISTRICT.

5 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

C.C. to M/S. A. THIYAGARAJAN Advocate on payment of necessary charges

Order
in
CRL.MP. No.4013 of 2020

in CRL.A.No.235 of 2020

Date : 29/06/2020

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RVR 22/07/2020