

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2020

Coram

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

and

The Hon'ble Mr. Justice D.KRISHNAKUMAR

CRL MP Nos. 5209 and 8239 of 2020

in Crl.A Nos. 225 and 513 of 2020

Chandrasekar ... Petitioner in
Crl.M.P.No.5209 of 2020

1.Selvakumar ... Petitioners in
2.Mohan ... Crl.M.P.No.8239 of 2020

vs

State, Represented by
Inspector of Police,
Polur Police Station. ... Respondent in
both cases

Petition filed under Section 389(1) of Cr PC to suspend the sentence imposed in S.C.No. 60 of 2018 dated 17.03.2020 on the file of Principal District and Sessions Judge, Thiruvannamalai, Thiruvannamalai District pending disposal of the appeal.

For Petitioner .. Mr.Karthic, Sr. Counsel
for Mr.A.E.Ravichandran
in both cases

For Respondent .. Mr.K.Prabhakar,
Addl. Public Prosecutor
in both cases

ORDER

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

The petitioner in Crl.M.P.No.5209 of 2020 has been arrayed as A1 and the petitioners in Crl.M.P.No.8239 of 2020 have been arrayed as A2 and A3 respectively in S.C.No. 60 of 2018 on the file of the Principal District and Sessions Judge, Thiruvannamalai. By judgment dated 17.03.2020, A1 was convicted for the offence punishable under Sections 148, 306(ii), 302 IPC, A2 was convicted for the offence

punishable under Sections 148, 323(2) (2 counts), 506(ii) and 302 IPC and A3 was convicted for the offence punishable under Sections 148, 323, 506(ii) and 302 IPC. For the offence punishable under Section 302 IPC, A1 was sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo six months simple imprisonment, for the offence punishable under Sections 148 and 506(ii) IPC, A1 was sentenced to undergo two years rigorous imprisonment for each offence and to pay a fine of Rs.1,000/- for each offence and in default, to undergo one month simple imprisonment for each offence. For the offence punishable under Sections 148, 506 (ii) IPC, A2 was sentenced to undergo two years rigorous imprisonment for each offence and to pay a fine of Rs.1,000/- for each offence and in default, to undergo one month simple imprisonment for each offence and for the offence punishable under Section 323 (2 counts) IPC, A2 was sentenced to undergo one year rigorous imprisonment each and to pay a fine of Rs.1,000/- each in default to undergo one month simple imprisonment each. For the offence punishable under Sections 148 and 506(ii) IPC, A3 was sentenced to undergo two years rigorous imprisonment for each offence and to pay a fine of Rs.1,000/- for each offence and in default, to undergo one month simple imprisonment for each offence and for the offence punishable under Section 323 IPC, A3 was sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/- and in default to undergo one month simple imprisonment. Seeking suspension of sentence, the present petitions have been filed.

2.The case of the prosecution is that there was a prior motive for the alleged offence committed by the petitioners as there was a civil dispute between the father of A1 and the husband of the elder-sister of the deceased, by name, Thilaka. On the date of occurrence, all the accused joined together and attacked the deceased and P.Ws 1 to 5 by going to the place of the said Thilaka. Insofar as the petitioner in 5209 of 2020, who has been arrayed as A1 is concerned, the overt act attributed against him is that he attacked the deceased with iron rod. The other accused, namely, A2 and A3 attacked the deceased over the body apart from attacking P.Ws 3 and 4.

3.The trial Court by placing reliance upon the evidence of P.Ws 1 to 5 rendered conviction as aforesaid. Seeking suspension of sentences, imposed by the judgment dated 17.03.2020, these petitions have been filed. We may note that the earlier petition filed by A1 has been dismissed by this Court on 16.07.2020.

4.Learned Senior Counsel appearing for the petitioners submitted that while considering the charge under Section 148 IPC, the Court will have to adopt more caution. In the case on hand, A4 to A8 have been acquitted. P.Ws 3 and 4 have stated that all the accused attacked the deceased. There is a doubt over the timing of registration of the complaint given under Ex.P1 by P.W.1. There is a discrepancy in this regard between the evidence of P.W 1 and the Investigating Officer. Further there is a doubt over the recovery made. These aspects have not been considered by this Court while rejecting the earlier petition filed on behalf of A1. Insofar as A2 and A3 are concerned, the trial Court itself has convicted them to

undergo Rigorous Imprisonment for two years. Thus, considering the above, and taking into consideration the period of incarceration, these petitions will have to be allowed.

5. Learned Additional Public Prosecutor appearing for the State submitted that the earlier petition was dismissed on merit. This Court has held that in view of the evidence of P.Ws 1 to 5, A1 is not entitled for suspension of sentence. There is no change in the circumstances. The trial Court considered the entire evidence and rendered conviction. Thus, these petitions will have to be dismissed.

6. It is a case of the prosecution that all the accused who are eight in formed an unlawful assembly and thereafter committed the offence. All the accused 4 - 8 were acquitted. A1 has been convicted based upon the evidence that he attacked the deceased on the head. The evidence of the Doctor, who authored the post-mortem certificate and who has been examined as P.W.13 indicates that the deceased could have died due to the external injuries. However, two injuries are mere bruises. The question for consideration is as to whether the said injury has been caused by A1 or not. The witnesses also speak about the usage of the wooden log. They have further deposed that all the accused attacked the deceased. As rightly submitted by the learned Senior Counsel appearing for the petitioners, the Court will have to be more cautious while rendering the conviction by invoking Section 148 of the IPC. The entire clash is said to have occurred pursuant to a dispute arose between the parties. The other accused, namely A4 to A8 have already been acquitted with the same set of evidence. Thus, we do find the existence of arguable points available in the appeals. This Court on the earlier occasion has not considered the submissions made by the learned Senior Counsel appearing for the petitioners. Further more, the aforesaid order was passed by us on 16.07.2020 whereas we are at the fag end of the year 2020. Therefore, by taking into consideration the existence of arguable points in the appeals coupled with the period of incarceration, we are inclined to suspend the sentence. As against A1 and A3, the sentence itself is for a period of two years. Thus, considering the above, we are inclined to suspend the sentence.

7. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that each of the petitioner 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 Judicial Magistrate, Polur and on further condition that they shall report before the concerned Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-

22/12/2020

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

TRUE COPY

TO

1 THE PRINCIPAL DISTRICT AND
SESSIONS JUDGE, THIRUVANNAMALAI.

2 THE JUDICIAL MAGISTRATE,
POLUR.

3 THE CHIEF JUDICIAL MAGISTRATE
THIRUVANNAMALAI [FOR INFORMATION]

4 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE,
POLUR POLICE STATION.

+4 C.C. to M/S. A.E RAVI CHANDRAN Advocate on payment of
necessary charges SR.Nos.8557 & 8558

Order

in
CRL MP.Nos.5209 & 8239/2020

in
CRL A.Nos.225 & 513/2020

Date :22/12/2020

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