

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2020

CORAM:

THE HON'BLE MR.JUSTICE N.KIRUBAKARAN

and

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.M.P.No.5425 of 2020
in Crl.A.No.670 of 2019

Ashok Kumar

.. Petitioner/Appellant
/Accused No.3

-Vs-

State by
Inspector of Police
Koradacheri Police Station
Thiruvarur District
Crime No.17 of 2014

...Respondent/Respondent.

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C., to suspend the sentence imposed on the petitioner herein by the learned Principal District and Sessions Judge, Thiruvarur, Thiruvarur District made in S.C.No.123 of 2015 dated 30.07.2019 on his file and enlarge him on bail pending disposal of the above Crl.Appeal No.670 of 2019.

For Petitioner : Mr.V.Selvaraj

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

O R D E R

(Order of the Court was made by P.VELMURUGAN, J.)

The respondent police registered a case against the petitioner and two others for the offences punishable under Sections 449, 294(b), 302 and 506(ii) r/w. 34 IPC. After the investigation, laid a charge sheet before the learned Judicial Magistrate, Thiruvarur in PRC.No.7 of 2015. The learned Magistrate, after completing the procedural formalities, committed the above said case to the Principal District and Sessions Judge, Thiruvarur, in S.C.No.123 of 2015. The learned Principal District and Sessions Judge, after framing the charge and after completing the trial, since the first accused died, abated the charge against the 1st accused and convicted

the present petitioner/A-3 and the 2nd accused for the offences punishable u/s.449 and 302 r/w.34 of IPC and both the accused were convicted and sentenced each to undergo imprisonment for life and each imposed a fine amount of Rs.1000/- in default each to undergo 6 months R.I. for the offence u/s.302 r/w.34 IPC. Both the accused are convicted and sentenced each to undergo 2 years R.I., and each imposed fine amount of Rs.500/- in default to undergo 3 months R.I., for the offence punishable u/s.449 IPC and both the sentences are ordered to run concurrently. Challenging the said judgment passed by the learned Sessions Judge, the petitioner has filed the present appeal.

2. The case of the prosecution is that the petitioner/appellant has been arrayed as A-3. The deceased Selvaraj is a retired Railway employee. Accused used to shout in the street daily and the same was informed to the police by the deceased Selvaraj. Hence, the accused had developed enmity with the deceased Selvaraj. On 12.01.2014, at about 6.45 p.m., while the deceased Selvaraj was standing inside his compound gate, all the accused trespassed into the compound and A-1 abused him in filthy language and assaulted him with aruval on the head and caused blood injury to him. The 2nd accused also assaulted him with aruval in the left shoulder and the petitioner herein assaulted him with aruval in the left ankle. Due to that, Selvaraj died. The respondent police registered the case and filed charge sheet. The trial court convicted the petitioner, as stated above. Now, the petitioner filed the present appeal along with the present Crl.M.P., seeking to suspend the sentence.

3. The learned counsel for the petitioner would submit that P.W.1 and 2 are the interested witnesses and the learned trial Judge rendered conviction based on the evidences of the interested witnesses which is against law. P.W.1 is the wife of the deceased Selvaraj. P.W.2 is the daughter in law of the deceased Selvaraj and both of them have not seen the occurrence. The witnesses have not identified the petitioner. Though the deceased was initially admitted in the private hospital and subsequently he was admitted in the Government Hospital but the doctor who admitted him in the private hospital was not examined as witness. The respondent has not collected the Accident Register and marked the document. Even the Post Mortem doctor has stated that he has not sent the Accident Register. When Selvaraj brought to the Government Hospital, he died, but the Government Hospital has not entered the same into the Accident Register. There is no independent witness to prove the case against the petitioner. The case as has been put forth by the prosecution has not been proved. Therefore, the learned Judge failed to consider all the material aspects and rendered the conviction and now, the petitioner has got arguable points in the appeal and till the hearing of the appeal, sentence may be suspended.

4. The learned Additional Public Prosecutor would submit that P.W.1 and 2 are the eyewitnesses in this case. They have clearly deposed that the petitioner along with two other accused trespassed into the compound gate and abused in filthy language and assaulted with aruval. Due to that, the deceased Selvaraj died. Post Mortem

report corroborated the same. The witnesses have identified the petitioner. There is a specific overt act against the petitioner. The learned Additional Public Prosecutor submits that she is ready for the appeal itself and therefore, the petition has to be dismissed.

5. Heard and perused the records.

6. The petitioner has been arrayed as A-3 in S.C.123 of 2015 on the file of Principal District and Sessions Judge, Thiruvallur. P.W.1 and 2 are the eyewitnesses. Though they are close relatives of the deceased, there is specific overt act attributed against the petitioner and the trial court also found that the petitioner committed the offences punishable under Sections 449 and 302 read with 34 IPC. The points raised by the learned counsel for the petitioner are touching the merits of the appeal and that can be decided at the time of final hearing of appeal and not at this stage. Since there is a specific overtact against the petitioner, this court is also inclined to take up the appeal itself immediately after receiving the records from the trial court and preparing typed set by the Registry.

7. In view of the same and considering the serious nature of the offence, this Court is not inclined to suspend the sentence imposed on the petitioner/Appellant. Hence, this Criminal Miscellaneous Petition is dismissed.

-sd/-

01/10/2020

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

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Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

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TO

1 THE PRINCIPAL DISTRICT AND
SESSIONS JUDGE, THIRUVARUR.

2 THE JUDICIAL MAGISTRATE,
THIRUVARUR.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
KORADACHERI POLICE STATION,
THIRUVARUR DISTRICT.

5 THE SECTION OFFICER,
CRIMINAL SECTION,
HIGH COURT, MADRAS.

C.C. to M/S.V.SELVARAJ Advocate on payment of necessary charges

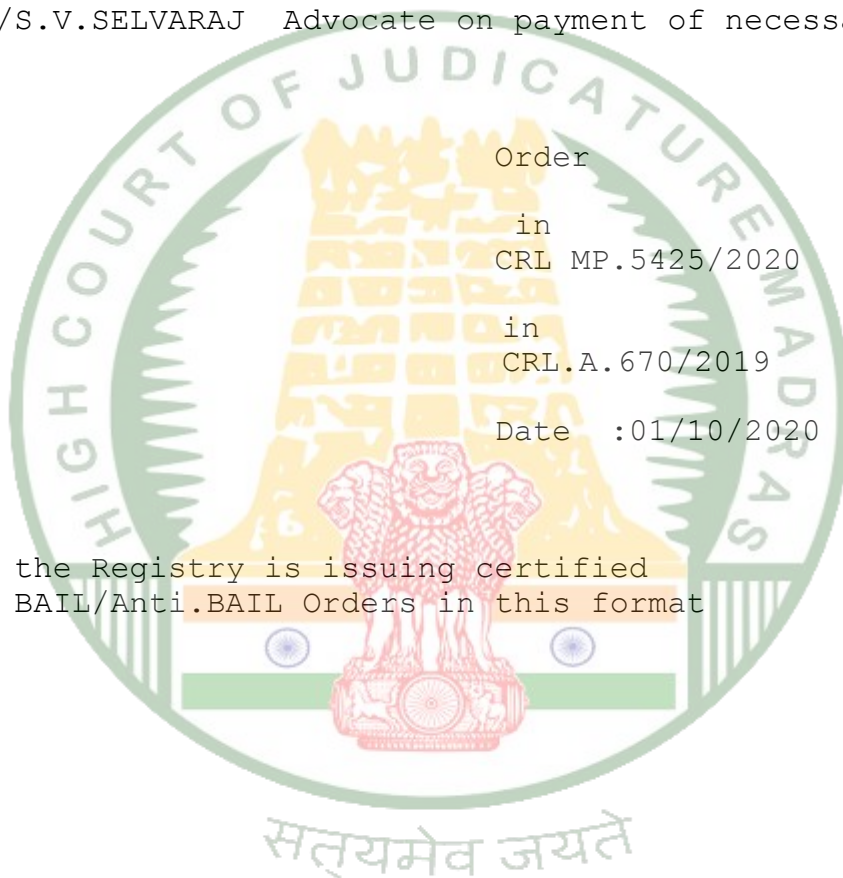
Order

in
CRL MP.5425/2020

in
CRL.A.670/2019

Date :01/10/2020

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