

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Second day of November Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice M.M.SUNDRESH

and

The Hon`ble Mr Justice D. KRISHNAKUMAR

CRIMINAL MISCELLANEOUS PETITION No.6216 of 2020

IN CRL.A.NO.229 OF 2020

1 SELVARAJ
2 SUNDARRAJ
3 CHELLAPILLAI
4 MANIKANDAN

[PETITIONERS / APPELLANTS /
ACCUSED NO.1 TO 5 & 7]

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE,
V.KALATHUR POLICE STATION,
PERAMBALUR DISTRICT,
(CRIME NO.149/2009).

[RESPONDENT / RESPONDENT /
COMPLAINANT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.No.229/2020 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on them by the Learned Sessions Judge, Mahila Court, Perambalur, Perambalur District Dated 27.02.2020 made in S.C.No.43 of 2010 on his file and enlarge them on bail pending disposal of the above Crl.A.No.229/2020.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.229/2020 on the file of the High Court and upon hearing the arguments of M/S. V.BALU, Advocate for the petitioners and of M/S. K.PRABAKAR, Additional Public Prosecutor on behalf of the Respondent the court made the following order:-

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

The petitioners have been arrayed as **(*)A1, A2, A4 & A7** for the major offence punishable under Section 302 IPC in SC.No.43 of 2010 along with four other accused. Challenging the conviction and sentence rendered by the trial Court for the life, the present appeal has been filed. Pending the appeal, this petition has been filed by the petitioners seeking suspension of sentence. Trial Court, under judgment dated 27.02.2020, convicted the petitioners and sentenced

Petitioner/Accused	Conviction	Sentence
Petitioner/ A5 to A7	Section 147 of IPC	One year R.I.
Petitioner/A1 to A4	Section 148 of IPC	Two years R.I.
Petitioner/A1 to A7	Section 447 of IPC	Three months R.I.
Petitioner/A1 to A7	Section 341 of IPC	One month S.I
Petitioner/A1 to A7	Section 302 r/w 34 of IPC	Sentenced to undergo life imprisonment and to pay fine of Rs.2000 i/d 6 months S.I
Petitioner/A3 & A4	Section 307 of IPC	10 years R.I and to pay a fine of Rs.1,000/- i/d 6 months S.I.
Petitioner/A1, A2, A5 to A7	Section 307 r/w 149 of IPC	10 years R.I and to pay a fine of Rs.1000/- i/d 6 months.
Petitioner/A5, A6 & A7	Section 323 of IPC	Six months R.I
Petitioner/A1 to A4	Section 323 r/w 149 of IPC	Six months R.I

2. The case of the prosecution is that the deceased purchased the property belonging to PW8 which was eyed upon by A1 and A2 namely petitioners 1 and 2. There is a common well in use which is attached to the property purchased by the deceased and being held by A1 & A2. On the date of occurrence, the deceased came to the common well to irrigate his lands. It was accordingly objected by the petitioners 1 and 2, thereafter all the accused joined together and attacked the deceased and committed the offence. A1 and A2 attacked the deceased with knife when A3, A4 and A5 caught hold of him and A7 attacked the deceased with wooden log.

3. The learned counsel appearing for the petitioner submitted that the evidence of PW1 to PW3 cannot be accepted as they have stated that they came to the place of occurrence just a minute before. Accordingly, they reached the place after hearing the noise. PW1 could not be the author of the FIR and there is unexpected delay in FIR reaching the jurisdictional Court. PW19 was present immediately after the occurrence. Therefore, a cogent reading of the evidence of PW1 to PW7, PW 13 and PW 19, it is clear that the prosecution has not proved its case. A3 and A5 were also injured though the investigating officer says that A3 and A4 have been admitted in the hospital, the accident register has not been marked. There is nothing to substantiate as to whether any complaint has been registered. If the complaint has been registered, leading to final

report being filed, there must have been a joint trial. A5 has already got his sentence suspended. The petitioners are agriculturists and they are under incarceration for more than 8 months as of now. Thus there are arguable points in the appeal to adjudicate and hence suspension of sentence will have to be granted.

4. The learned Additional Public Prosecutor appearing for the State submitted that a case has been registered as against others for the assault made on A3 and A5. Since there is a bar of limitation, the said complaint could not be proceeded further. The trial Court rightly considered the evidence of PW1 to PW3. PW2 is an injured witness. Hence there is a specific overt act against all the accused persons. Thus this petition is liable to be dismissed.

5. Upon hearing the submissions, we are of the view that the prosecution ought to have tried both the cases together. Even if Section 468 of Cr.P.C. is applicable, it could not act as a complete embargo. The delay in the given case can very well be explained. The prosecution has not taken any steps to go for joint trial. If that is taken into consideration the case as projected by the prosecution creates serious doubt on prima facie consideration. We are dealing with a situation involving a case in counter. Therefore, the question for consideration as to whether the offence committed under Section 302 IPC is made out or not. The petitioners are under incarceration from 27.02.2020 onwards. The dispute arose pursuant to the span emanated over usage of water available in the common well. Thus, we do find several points available in the appeal to be considered. In such view of the matter, we are inclined to suspend the sentence.

6. Considering the above and taking into consideration the period of incarceration, 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, Perambalur and on further condition that the petitioners shall stay at Madurai and report before the Thallakulam Police Station, Madurai every day at 10.30 a.m. until further orders.

-sd/-

02/11/2020

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.

(*) Being mentioned as per Order of this Court dated 09.11.2020 made in Crl.MP.No.6216/2020 in Crl.A.No.229/2020

TO

1 THE SESSIONS JUDGE,
MAHILA COURT, PERAMBALUR,
PERAMBALUR DISTRICT.

2 THE JUDICIAL MAGISTRATE,
PERAMBALUR.

3 THE CHIEF JUDICIAL MAGISTRATE
PERAMBALUR [FOR INFORMATION]

4 THE SUPERINTENDENT,
CENTRAL PRISON, TIRUCHIRAPALLI.

5 THE INSPECTOR OF POLICE,
V.KALATHUR POLICE STATION,
PERAMBALUR DISTRICT.

6 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

7 THE OFFICER INCHARGE
THALLAKULAM POLICE STATION,
MADURAI.

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

Order

in
CRL MP.6216/2020

in
CRL.A.229/2020

Date :02/11/2020

WEB COPY

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