

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2020

Coram

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

and

The Hon'ble Mr. Justice D.KRISHNAKUMAR

CRL MP No. 7055 of 2020

in

CrI.A No. 12 of 2020

Sankar @ Sankaramoorthi Petitioner

vs

The State Rep. by
The Inspector of Police,
Thakkolam Police Station,
Vellore District. ... Respondent

Petition filed under Section 389(1) of Cr.P.C. to suspend the sentence of imprisonment alone imposed on the petitioner herein by the learned Second Additional District and Sessions Judge, Vellore District at Ranipet on 31.10.2019 made in S.C.No.188 of 2015 and enlarge him on bail pending disposal of the appeal.

For Petitioner .. Mr.C.Saravanan

For Respondent .. Mr.K.Prabhakar,
Addl. Public Prosecutor

ORDER

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

The petitioner has been arrayed as A1 in S.C.No. 188 of 2015 on the file of II Additional District and Sessions Judge, Vellore District at Ranipet. The trial Court by judgment dated 31.10.2019 convicted the petitioner along with A2, who is none other than the brother-in-law, for the offence punishable under Section 302 r/w 34 IPC and sentenced him to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo six months simple imprisonment. Seeking to suspend the sentence, the present petition has been filed.

2. The case of the prosecution is that pursuant to the prior motive which arose due to the conduct of the temple festival both the accused waylaid the deceased and attacked him. Insofar as the petitioner is concerned, he is stated to have attacked the deceased with iron rod on the head.

3. Learned counsel appearing for the petitioner submitted that A2 has already got his sentence suspended by the order of this Court dated 29.06.2020. Though the earlier petition was withdrawn, considerable length of time has passed in the meanwhile. The petitioner has been under incarceration for more than one year. Inasmuch as Section 34 IPC is attracted, this petitioner is also entitled for the same benefit. The overt act attributed against the petitioner is only attacking the deceased with iron rod. The offence under Section 302 IPC is not made out and, therefore, the sentence will have to be suspended.

4. Learned Additional Public Prosecutor appearing for the State submitted that P.Ws 1 to 8 are the direct eye witnesses. Recovery has been made pursuant to the statement made by the petitioner, which has also been signed by P.W.11. The trial Court considered this aspect while rendering conviction and, therefore, this petition will have to be dismissed.

5. After going through the judgement of the trial Court, we do find that there are sufficient issues involved to be decided in the appeal. P.Ws. 9 and 11 have turned hostile. The overt act attributed against the petitioner is that he attacked the deceased on the head with iron rod. The petitioner has been under incarceration for more than one year. The charge against the petitioner is one under Section 302 r/w 34 IPC. Thus, taking into consideration the above said facts, we are inclined to suspend the sentence.

6. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that 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, Arakkonam, Vellore District and on further condition that the petitioner shall report before the concerned Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-

18/11/2020

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.

TO

1 THE JUDICIAL MAGISTRATE,
ARAKKONAM, VELLORE DISTRICT.

2 THE CHIEF JUDICIAL MAGISTRATE
VELLORE (FOR INFORMATION)

<https://hcservices.ecourts.gov.in/hcservices/>

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
THAKKOLAM POLICE STATION,
VELLORE DISTRICT.

5 II ADDITIONAL DISTRICT AND
SESSIONS JUDGE, VELLORE DISTRICT.

6 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

+2 C.C. to M/S. G.SARAVANAN Advocate on payment of necessary
charges Sr.7571

Order

in
CRL MP.7055/2020

in
CRL A.12/2020

Date :18/11/2020

From 7.2.2001 the Registry is issuing certified
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RVR 18/11/2020

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