

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2020

Coram

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

and

The Hon'ble Mr. Justice D.KRISHNAKUMAR

CRL MP Nos.7591 and 8697 of 2020

in Crl.A Nos.18 and 533 of 2020

Silambarasan Petitioner in
Crl.M.P.No.7591 of 2020

Raguvarandan Petitioner in
Crl.M.P.No.8697 of 2020

vs

State by Respondent in both cases
The Inspector of Police,
T5 Thiruverkadu Police Station,
Thiruverkadu, Thiruvellore District.

Petitions filed under Section 389(1) of Cr PC to suspend the sentence imposed in S.C.No.75 of 2017 dated 31.10.2019 on the file of the III Additional Sessions Judge at Poonamallee pending disposal of the Criminal Appeals.

For Petitioner .. Mr.B.S.Ramesh
in both cases

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

COMMON ORDER

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

The petitioner in Crl.M.P.No.7591 of 2020 has been arrayed as A1 and the petitioner in Crl.M.P.No.8697 of 2020 has been arrayed as A2 in S.C.No.75 of 2017 on the file of the III Additional Sessions Judge, Poonamallee. By judgment dated 31.10.2019, the petitioners were convicted for the offence punishable under Section 302 r/w 34

IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo eight months rigorous imprisonment. Seeking suspension of sentence, the present petitions have been filed.

2.The case of the prosecution is that the deceased and P.W.1 went to one Mani seeking jobs. They received a sum of rs.200 from the abovesaid Mani. That money was used for drinking. The information regarding usage of money for taking liquor was made known to Mani by the petitioners. This created quarrel between the parties. Thereafter, the petitioners went to the place of occurrence and attacked the deceased. P.Ws.1, 4 and 7 were eye witnesses. P.Ws.6 and 8 speak about the arrest and recovery.

3.Learned counsel appearing for the petitioners submitted that the occurrence is said to have taken place in dark lane. P.W.1 cannot be the eye witness. The subsequent conduct of the petitioners will have to be seen. They did attend the work after the alleged occurrence. There is a discrepancy with respect to the arrest made. Thus, the evidence adduced by the prosecution cannot be believed. The petitioners are also under incarceration for more than one year - from 31.10.2019 onwards. There is no previous case in which they are involved. It is further submitted that the quarrel, if any, must have been at the instance of the deceased and P.W.1 and not the petitioners. Thus, the petitions will have to be allowed.

4.Learned Additional Public Prosecutor appearing for the State submitted that there are eye witnesses in the form of P.Ws.1 to 4 and 7. P.Ws.6 and 8 speak about the arrest and recovery. The trial Court considered these evidence adduced while rendering the conviction. Thus, the petitions will have to be dismissed.

5.The petitioners are under incarceration from 31.10.2019 onwards. Even as per the version of the prosecution, the first quarrel was at the instance of the deceased and P.W.1. The overt act attributed against A1 is that he attacked the deceased with wooden log while A2 used wooden reaper. Therefore, even assuming that the petitioners are aggressors, the question for consideration is as to whether the case would come under the purview of Section 300 or merely 299 IPC. The further question for consideration is who was responsible for starting the fight on the second occasion. Considering the above, we are inclined to suspend the sentence.

6.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 III Additional Sessions Judge, Poonamallee 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 appeals.

-sd/-
23/12/2020

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 III ADDITIONAL SESSIONS JUDGE,
POONAMALLEE.

2 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAI, CHENNAI.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
T-5, THIRUVERKADU POLICE STATION,
THIRUVERKADU,
THIRUVELLORE DISTRICT.

+1 C.C. to M/S.B.S.RAMESH Advocate on payment of necessary charges SR.NO.8671

+1 C.C. to M/S.S.SILAMBU SELVAN Advocate on payment of necessary charges SR.NO.8672

Order

in
CRL MP.7591 & 8697/2020

in
CRL A.18 & 533/2020

Date :23/12/2020

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