

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.12.2020

PRONOUNCED ON : 21.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.Nos.7454 & 7455 of 2020

in Crl.A.No.481 of 2020

Venkatesh ... Petitioner in Crl.M.P.No.7454 of 2020
in Crl.A.No.481 of 2020

Asaithambi @ Santhoshkumar ... Petitioner in Crl.M.P.No.7455 of 2020
in Crl.A.No.481 of 2020

Versus

State,
Represented by,
Inspector of Police,
Kannankurichi P.S.,
Crime Number 103/2016. ... Respondent in both cases

PRAYER in Crl.M.P.No.7454 of 2020 in Crl.A.No.481 of 2020: Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure, to suspend the operation of the sentence imposed by the 3rd Additional District and Sessions Judge, Salem in S.C.No.460/2016 dated 03.11.2020 and grant bail to the petitioner on bail pending disposal of the above Criminal Appeal.

PRAYER in Crl.M.P.No.7455 of 2020 in Crl.A.No.481 of 2020: Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure, to suspend the operation of the sentence imposed by the 3rd Additional District and Sessions Judge, Salem in S.C.No.460/2016 dated 03.11.2020 and grant bail to me, pending disposal of the above Criminal Appeal.

In both cases:

For Petitioner : Mr.E.K.Kumaresan

For Respondent : Mr.C.Raghavan,
Government Advocate [Crl. Side]

COMMON ORDER

Both the Criminal Miscellaneous Petitions are filed to suspend the sentence imposed on the petitioners by the learned III Additional District and Sessions Judge, Salem in S.C.No.460 of 2016, dated 03.11.2020.

2.The petitioners were convicted for offence under Section 326 IPC and sentenced to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default to payment, 6 months Rigorous Imprisonment and for offence under Section 3(1) of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992, the petitioners were sentenced to undergo 2 years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default to undergo 6 months Rigorous Imprisonment.

3.The gist of the case is that PW1 is residing at Kannankurichi with his family and doing mechanical works. PW15 is his son. A1 to A7 and PW1 are close relatives and they have enmity with regard to the property dispute. On 18.03.2016, at about 11.00 a.m., PW1 attempted to install EB post in his land which was objected by A4 and his men and they picked up quarrel with PW1 and stopped the work and went away. On the same day, at about 10.45 p.m., the petitioners along with five others formed into unlawful assembly with common object of committing riot and to assault PW1 and his son/PW15. PW1 opened the door and came out, found 1st petitioner armed with knife and others armed with sticks and bricks and picked up wordy quarrel. PW1 was attacked by A1 with knife, A4 with brick stone and the other accused A3 and A5 to A7, beat PW1 with stones and caused injuries. On seeing the same, PW15 came in rescue of his father, at that time, he was attacked by A2 with brick stone on his back of his head and the other accused A3, A5 and A7 hit PW15 with stone. Further, all the seven persons damaged Maruthi car of PW1 and the glass panel of window, table and chair and threatened PW1 and PW15 and left the scene of occurrence.

4.PW3, on coming to know about the incident, took to PW1 and PW15 to Government Hospital, Salem. PW11, the Casualty Medical Doctor admitted PW1 and PW15 as inpatient and gave treatment, recorded the Accident Registers [Exs.P10 & P11]. From the hospital, the information was sent to the respondent Police. PW14, the Special Sub Inspector visited the hospital on the next day morning on 19.05.2016, at about 05.30 a.m., recorded the statement of PW1, registered the FIR [Ex.P15] and handed over investigation to PW17. PW17 visited the scene of occurrence, prepared Observation Mahazar [Ex.P2], enquired the witnesses, recorded their statements present in the scene of occurrence, arrested A1 to A4. On the confession of A1, Broken Glass Pieces-Car [MO2], Broken Glass Pieces-from the Window panel [MO3] and Broken Brick Stones [MO4] were recovered from the scene of occurrence. PW1 and PW15 without intimating the Doctor at Government Hospital, Salem left the hospital and PW1 got admitted in Dharan Hospital, Salem and took further treatment and PW15 got admitted in

Neuro Foundation Hospital, Salem, for further treatment. PW8, Car Mechanic repaired the glass and gave valuation for the window screen. PW10, Carpenter fixed the window glass and gave valuation for the damages to the windows. On completion of investigation, charge sheet came to be filed. During trial, the prosecution examined 17 witnesses and marked 20 documents and 4 material objects. On the side of the defence, no witnesses and no documents were marked. The trial Court on considering the evidence and materials, convicted the petitioners/A1 and A2 and acquitted the other accused/A3 to A7 as stated above.

5.The learned counsel for the petitioners submitted that in this case, the petitioners and PW1 and other witnesses are close relatives, PW2 is the brother's son of PW1; PW3 is the friend of PW2; PW4 and PW5 are the brothers of PW1 and PW6 is the another relative. P.W.15 is the son of P.W.1 Hence, the witnesses for the occurrence are all close relatives motivated against the petitioners with regard to dispute over the property. PW1 admitted that the case in Crime No.102 of 2016 was registered against him and his wife on the complaint of one Tamilselvi, who is none other than sister of Rajkumar/A4. Thus, there was clear motive to implicate the petitioners in this case. The learned counsel further submitted that other than PW1 and PW15, others were projected as witnesses to the occurrence. The evidence of PW2 & PW5 are unbelievable. PW2 as well as PW5 admitted that they came to the scene of occurrence later. In their evidence, they have given improvised version to their earlier statement, recorded during investigation. PW3, PW4 and PW6 have not supported the case of the prosecution and they were treated hostile. PW6 and PW7 are the witnesses for arrest and confession of A1. PW7 admit that he is a close relative of PW1, he has signed in the confession of A1 [Ex.P18] statement along with PW6 and confirmed that he is not aware what is written in confession [Ex.P18] and Recovery Mahazar [Ex.P3]. The signatures of the witnesses alone were marked and mahazars were not marked. The Mahazar was marked through the Investigating Officer.

6.The learned counsel for the petitioners submitted that the admissible portion of the confession [Ex.P18] was marked through the Investigating Officer, which is not proper. Thus, the recovery of the Knife [MO1] becomes highly doubtful. Coupled with the fact that PW11, the Casualty Medical Doctor, who admitted PW1 and PW15 as inpatient did not record in Accident Register [Ex.P10] with regard to fracture found in Ulna Bone in the fore arm of PW1. Further, PW1 and PW15 had given exaggerated version, implicating the entire family members of the petitioners. PW1 and PW15 initially state they were attacked by 10 persons by using brick and sticks and attack with knife later introduced. Likewise, this 10 persons later becomes 7 persons qualifying that five male and two female, when they got admitted in Dharan Hospital, Salem as recorded by PW12 and in Neuro Foundation Hospital, Salem as recorded by PW13. Thus, the trial Court disbelieving the evidence of the witnesses had acquitted A3 to A7 in this case. The trial Court held that all the witnesses have not specified the specific overtact of each of the accused and the witnesses have only given bald statements, which are unbelievable.

Strangely, the trial Court convicted the petitioners on the ground that the evidence of Doctors/PW12 & PW13 are in conformity to the evidence of PW1 and PW15, which is not so. The evidence of PW12 and PW13 are contrary to the evidence of PW9 and PW11/the Government Doctors, who initially examined PW1 and PW15. PW9 state that PW1 and PW15 left the hospital without informing hospital authorities and hence, no wound certificate given. PW12 given a Wound Certificate [Ex.P13] stating that PW1 sustained a fracture and the injury is grievous, Ex.P11 is the Accident Register of PW11 issued by the Government Hospital, Salem, in which there is no mention about any fracture or any injury in Ulna Bone of PW1. This fact has been lose sight by the trial Court.

7.PW13 admitted that it was a medico-legal case and he has to inform the police about PW15 getting treatment further on what basis treatment taken in the Government Hospital, Salem is recorded by him for which no contemporary documents produced. The medical certificates [Exs.P12 to P14] are got up documents in this case. The trial Court failed to consider these documents in its right perspective and convicted the petitioners mechanically. Hence, he prayed for suspension of sentence for the petitioners.

8.The learned Government Advocate [Crl. Side] appearing for the respondent Police submitted that in this case, PW1 and all the accused are close relatives and they have property dispute, with the accused group due to which, civil cases are pending between them. PW1 and PW15 are injured witnesses in this case. The accused group objected when PW1 attempted to install EB post in his land on 18.03.2016, due to which, there was a wordy quarrel and the accused successfully stalled the installation of EB post. On the same day, at about 10.45 p.m., the accused group of seven in number, had gone to the house of PW1, shouted at him by using abusive words. PW1 came out, at that time, the accused group armed with knife, stick, bricks and assaulted PW1. When PW15 son of PW1 attempted to rescue his father, he was also assaulted. PW1 was stabbed by A1 with Knife [MO1] and other accused assaulted him with stone. PW15 was attacked by A2 with stone. All the accused joined together and damaged Maruthi Car and window panel of PW1's house and left the scene of occurrence. On hearing the same, PW3 came there, took PW1 and PW15 to the Government Hospital, Salem. Both were admitted as inpatient and took treatment. PW11, the Casualty Medical Doctor, issued Accident Register who admitted them. From the Government Hospital, Salem information was sent to the respondent Police. PW14, on 19.05.2016 had come to the Hospital, recorded the statement of PW1, received the complaint [Ex.P1], registered FIR [Ex.P15]. PW17, the Investigating Officer took up investigation, visited the scene of occurrence, prepared Observation Mahazar [Ex.P2], Rough Sketch [Ex.P17], enquired the witnesses, arrested A1 to A4 and on the confession of A1, recovered MO1 to MO4.

9.Thereafter, for better treatment, PW1 got admitted in Dharan Hospital, Salem and PW15 got admitted in Neuro Foundation Hospital, Salem. On completion of investigation, charge sheet came to be filed. The trial Court on the evidence and materials produced

convicted petitioners and acquitted A3 to A7, for the reason witnesses to the occurrence had not specified the overtact of each of the accused. As regards, the petitioners are concerned, PW1 and PW15 categorically stated about the overtact against them, which is supported and corroborated with the evidence of PW12 and PW13, Doctors. Hence, the trial Court convicted the petitioners.

10.This Court considered the rival submissions and perused the materials available on record.

11.It is seen that the petitioners and PW1 are close relatives, there is a civil dispute between them over the properties. PW1 and PW15 are the injured witnesses. PW1 and PW15 were taken by PW2 to Government Hospital, Salem. At that time, PW11, the Casualty Medical Doctor examined them gave Accident Registers [Exs.P10 & P11]. In the Exs.P10 & P11, it is mentioned that 10 persons assaulted them using stick and stones. PW1 and PW15 without informing the Government Doctors, against medical advice, had left the hospital and got themselves admitted in the Dharan Hospital, Salem and Neuro Foundation Hospital, Salem on their own. PW12, the Doctor, gave the Wound Certificate [Ex.P13] state that PW1 had sustained fracture in Ulna Bone, which is not found in the Accident Register [Ex.P11] issued by the Government Hospital, Salem. Likewise, PW13 Doctor, who treated PW15, admit that he had not informed the Police, despite knowing that it is medico-legal case. Further, the PW13's explanation for the injuries given in Wound Certificate [Ex.P14] based on the Discharge Summary issued by the Government Hospital. In this case no such discharge summary produced further PW9, the Casualty Medical Doctor categorically state that against the medical advise PW1 and PW15 left the hospital, hence, other than Accident Register, no medical records were issued to them. The medical evidence is contra to the oral evidence adduced by PW1 and PW15. Further, the other witnesses to the occurrence namely PW2 and PW5 are the brother's son and brother of PW1. They have given exaggerated and contradictory version and hence, the trial Court disbelieved therein evidence with regard to A3 to A7, further PW3, PW4 and PW6 have not supported the case of the prosecution. The trial Court finding corroboration in the evidence of PW1 & PW15 with the evidence of PW12 and PW13, had convicted the petitioners. From the above discussion, it is seen that the evidence of PW12 and PW13 are clouded with mystery and doubtful. The trial Court on the same set of evidence acquitted A3 to A7.

12.Finding infirmities in the prosecution case and arguable points involved in the appeal, and the appeal is not likely to be taken up for final hearing in the near future, hence, this Court is of the considered view that the petitioners herein are entitled to the relief of grant of suspension of sentence.

13.Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioners are directed to be enlarged on bail on condition that the petitioners shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each with two sureties each for a like sum to the satisfaction of the learned III Additional

District and Sessions Judge, Salem, within a period of 15 days from the date of receipt of a copy of this order and on further condition that the petitioners shall appear before the said Court once in three months on first working day of English Calender Month i.e., from January 2021 at 10.30 a.m., till the disposal of the appeal. Both the petitions are ordered.

-sd/-
21/12/2020

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 DISTRICT
AND SESSIONS JUDGE, SALEM.

2 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
KANNANKURICHI POLICE STATION,
SALEM DISTRICT.

+1 C.C. to M/S.E.K.KUMARESAN Advocate on payment of necessary charges SR.No.8469

Order

in
CRL MP.Nos.7454 & 7455/2020

in
CRL A.481/2020

Date :21/12/2020

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