

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2020

Coram

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

and

The Hon'ble Mr. Justice D.KRISHNAKUMAR

CRL MP No. 19060 of 2019

in Crl.A No.908 of 2019

1.Moorthy
2.Ganesan
3.Sempattaiyan @ Thammanaicker
4.Perumal
5.Nagaraj
6.Arul Kumar
7.Bommanaicker

... Petitioners

vs

State Rep. by
Inspector of Police,
Mecheri Police Station,
Salem District.

... Respondent

Petition filed under Section 389 (1) r/w 439 of Cr.P.C. to suspend the sentence of imprisonment imposed in the judgment dated 11.11.2019 made in S.C.No.251 of 2016 on the file of the Additional District (Fast Track) Court, Mettur and enlarge the petitioners on bail pending disposal of the criminal appeal.

For Petitioners .. Mr.K.Selvaraj

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

ORDER

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

The petitioners have been arrayed as accused in S.C.No.251 of 2016 on the file of Additional District (Fast Track) Court, Mettur. The trial Court by judgment dated 11.11.2019 convicted A1 and A2 for the offence punishable under Sections 148, 341, 302 and 307 r/w 149 IPC. For the offence under Section 148 IPC, sentenced them to undergo 3 years rigorous imprisonment and to pay a fine of RS.2,000/-, in default, to undergo six months simple imprisonment, for

the offence under Section 341 IPC, sentenced them to undergo one month simple imprisonment and to pay a fine of Rs.500/-, in default, to undergo one week simple imprisonment, for the offence punishable under Section 302 IPC, sentenced them to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo three years simple imprisonment and for the offence punishable under Section 307 r/w 149 IPC, sentenced them to undergo life imprisonment.

2.A3 and A4 have been convicted for the offence punishable under Sections 148, 341, 302 r/w 149 and 307 IPC. For the offence punishable under Section 148 IPC, sentenced them to undergo 3 years rigorous imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo six months simple imprisonment, for the offence punishable under Section 341 IPC, sentenced them to undergo one month simple imprisonment and to pay a fine of Rs.500/-, in default, to undergo one week simple imprisonment, for the offence punishable under Section 302 r/w 149 IPC, sentenced them to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo three years simple imprisonment and for the offence punishable under Section 307 IPC, sentenced them to undergo life imprisonment.

3.A5 and A6 have been convicted for the offence punishable under Sections 147, 341, 302 r/w 34, 307 r/w 149 IPC. For the offence punishable under Section 147 IPC, sentenced them to undergo 2 years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo three months simple imprisonment, for the offence punishable under Section 341 IPC, sentenced them to undergo one month simple imprisonment and to pay a fine of Rs.500/-, in default, to undergo one week simple imprisonment, for the offence punishable under Section 302 r/w 34 IPC, sentenced them to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo three years simple imprisonment and for the offence punishable under Section 307 r/w 149 IPC, sentenced them to undergo life imprisonment.

4.A7 has been convicted for the offence punishable under Sections 147, 341, 302 r/w 149, 307 r/w 34 IPC. For the offence punishable under Section 147 IPC, sentenced him to undergo 2 years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo three months simple imprisonment, for the offence punishable under Section 341 IPC, sentenced him to undergo one month simple imprisonment and to pay a fine of Rs.500/-, in default, to undergo one week simple imprisonment, for the offence punishable under Section 302 r/w 34 IPC, sentenced him to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo three years simple imprisonment and for the offence punishable under Section 307 r/w 149 IPC, sentenced him to undergo life imprisonment.

5. Seeking suspension of sentence imposed, the present petition has been filed.

6. The case of the prosecution is that the first petitioner/A1 was having illicit relationship with the wife of the deceased. There was a prior fight in the form of quarrel between A1 and the deceased over the same. On the date of occurrence, -all the accused joined together, waylaid the deceased travelling in a two-wheeler and attacked him with iron rod and wooden log. A1 is stated to have attacked the deceased with the wooden log on the head. Specific overt acts have been attributed to the other accused either by attacking the deceased or PW1 or catching hold of the deceased. The trial Court convicted all the accused and hence the present appeal. Pending appeal, this petition has been filed seeking suspension of sentence.

7. Learned counsel appearing for the petitioners submitted that the very origin of FIR itself is in doubt. There is an unexplained delay in the FIR reaching the jurisdictional Magistrate - 14 hours. The place of occurrence is also in doubt. P.W.1 in his statement before the Court has stated the place of occurrence as nearer to his residence whereas the occurrence is said to have taken place in the foothills. There is a contradiction in the evidence of P.W.1 as against the FIR having been registered. P.W.6 has stated that within half an hour from the occurrence, the police had reached. All the petitioners are under incarceration for nearly one year. The date of conviction was on 11.11.2019 and all the accused persons are very young, in their early 20s. Thus, considering the above, the sentence will have to be suspended.

8. Learned Additional Public Prosecutor appearing for the State submitted that there are three eye witnesses, namely, P.Ws. 1, 2 and 6. Of the three, P.W.1 is the injured witness. The trial Court considered the evidence of P.Ws. 1, 2 and 6 coupled with the recovery and the post mortem report in convicting the petitioners.

9. By way of reply, learned counsel appearing for the petitioner submitted that insofar as A1 is concerned, he is not pressing this petition. Thus, insofar as A1 is concerned, this petition is dismissed as withdrawn.

10. Insofar as the other accused are concerned, as submitted by the learned counsel appearing for the petitioners, they have been under incarceration for nearly one year. At the time of occurrence, they were in the early 20s. The motive is not attributed as against them. Thus, considering the facts of the case and taking note of the existence of the issues to be decided in the appeal, we are inclined to suspend the sentence.

11. Accordingly, the substantive sentence of imprisonment alone is suspended insofar as petitioners 2 to 7/A2 to A7 are concerned, on condition that each of them 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 Additional District (Fast Track) Court, Mettur 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 appeal.

-sd/-

05/11/2020

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 ADDITIONAL DISTRICT
(FAST TRACK) COURT, METTUR.

2 THE SUPERINTENDENT,
CENTRAL JAIL, COIMBATORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

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

+1 C.C. to M/S.K.SELVARAJ Advocate on payment of necessary charges
SR.No.7297

Order

in

CRL MP.19060/2019

in

CRL.A.908/2019

Date :05/11/2020

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