



IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 28.01.2022

DELIVERED ON : 18.02.2022

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CORAM :
THE HONOURABLE MR. JUSTICE **P.N.PRAKASH**
AND
THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

Crl.M.P.Nos.9676 & 9677 of 2021
in Crl.A.No.158 of 2021

Crl M.P. No. 9676 of 2021

Oviyaraj . .. Petitioner
Vs.

The State of Tamil Nadu
by its Inspector of Police,
Needamangalam Police Station,
Thiruvarur District.
(Crime No.6 of 2017)

... Respondent

Crl M.P. No. 9677 of 2021

1. Vinodh
2. Ranjith Kannan
3. Neelamegam
4. Sekar
5. Kalaivani

... Petitioners

Vs.

The State of Tamil Nadu
by its Inspector of Police,
Needamangalam Police Station,
Thiruvarur District.
(Crime No.6 of 2017)

... Respondent

Criminal Miscellaneous Petitions filed under Section 389(1) of Cr.P.C., to suspend the sentence imposed on the petitioners by judgment and order dated 15.03.2021 passed in S.C.No.104 of 2017 on the file of the Principal and Sessions Judge, Thiruvarur, and to enlarge the petitioners on bail pending disposal of the appeal.

Crl M.P. No. 9676 of 2021

For Petitioner : Mr.A.V. Arun

For Respondent : Mr.R.Muniyapparaj
Additional Public Prosecutor.



Crl M.P. No. 9677 of 2021

For Petitioners : Mr.K.M. Subramaniam

For Respondent : Mr.R.Muniyapparaj
Additional Public Prosecutor.

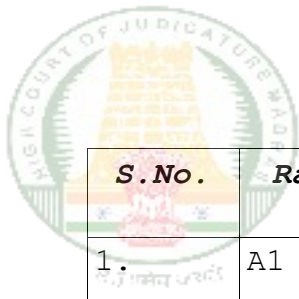
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COMMON ORDER

(Made by R.HEMALATHA, J.)

These criminal miscellaneous petitions have been filed seeking to suspend the sentence imposed on the petitioners by judgment and order dated 15.03.2021 passed in S.C.No.104 of 2017 on the file of the Principal District and Sessions Judge, Thiruvarur, and to enlarge the petitioners on bail pending disposal of the appeal.

2. The petitioners, who were accused in S.C.No.104 of 2017 before the Principal District and Sessions Judge, Thiruvarur, were convicted and sentenced as follows on 15.03.2021:



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S.No.	Rank of the accused	Conviction	Sentence
1.	A1	U/s. 148 IPC U/s.302 IPC	Imprisonment for two years. Imprisonment for life and a fine of Rs.5,000/, in default, to undergo imprisonment for one year.
2.	A2	U/s. 148 IPC U/s.302 IPC	Imprisonment for two years. Imprisonment for life and a fine of Rs.5,000/, in default, to undergo imprisonment for one year.
3.	A3	U/s. 147 IPC U/s. 342 IPC U/s. 302 IPC	Imprisonment for one year. Imprisonment for one year and a fine of Rs.1,000/-, in default, to undergo imprisonment for three months. Imprisonment for life and a fine of Rs.5,000/-, in default, to undergo imprisonment for one year.
4.	A4	U/s.147 IPC U/s. 323 IPC U/s. 302 IPC	Imprisonment for one year. Imprisonment for one year. Imprisonment for life and a fine of Rs.5,000/, in default, to undergo imprisonment for one year.
5.	A5	U/s.147 IPC U/s. 323 IPC	Imprisonment for one year. Imprisonment for one



3. Challenging the above conviction and sentence, the petitioners have filed Crl.A.No.158 of 2021 along with the instant miscellaneous petitions seeking suspension of sentence and bail.

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4. Heard Mr. A.V. Arun, learned counsel for the petitioner in Crl.M.P. No.9676 of 2021 and Mr.K. Subramaniam, learned counsel for the petitioners in Crl.M.P. No.9677 of 2021 and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent/State.

5. The case of the prosecution is that the defacto complainant and accused 4, both residents of Ottakudi Village, Needamangalam were neighbours. There were frequent quarrels between the two families. On 15.01.2017, the accused 1,2,3,5 and juvenile accused 7 visited the house of the 4th accused, which apparently was seen by Tamilselvan, the deceased, who was standing in front of his house. The victim called his brother Lenin stating that all the accused had come to pick up a quarrel again. According to the prosecution, this infuriated the accused, who in turn with the common intention of eliminating the victim Tamilselvan, confronted him. They were armed with weapons and attacked the victim causing grievous injuries to the victim, who died on the way to the hospital. Lenin was also injured in the scuffle and sustained simple injury on his left leg.

6. Mr. A.V. Arun, learned counsel for the petitioner in Crl.M.P. No.9676 of 2021 and Mr.K. Subramaniam, learned counsel for the petitioners in Crl.M.P. No.9677 of 2021 contended the following:

- 1) There was a delay in lodging the complaint to the police and consequent registering of FIR and sending the same to Judicial Magistrate Court.
- 2) There are inconsistencies in the evidence of the prosecution witnesses.
- 3) The investigation by the prosecution itself was shoddy especially when P.W.1's signature was not found on the FIR.
- 4) The name of A5 did not find a place in FIR and there is no reference about A5 in the judgment also.
- 5) The scene of occurrence was not established by the prosecution and there were several contradictory statements made by the prosecution witnesses in this regard.
- 6) There was absolutely no motive on the part of the accused since there existed no enmity between the deceased and the accused.
- 7) There was also no proper explanation regarding the possibility of the weapons used by the accused to have caused such fatal injuries on the deceased.
- 8) The prosecution has also failed in proving that there was a common intention on the part of the accused to do away with the victim.



9) Though A1 to A3 were also injured, the prosecution did not explain the same.

7. Per contra, Mr.R.Muniyapparaj, learned Additional Public Prosecutor would strongly counter all the points raised by the learned counsel for the accused. He had highlighted the condition of P.W.1 who himself was attacked and also suffered an injury and therefore, any delay on his part in lodging the complaint cannot be blown out of proportion considering the practical situation. He also pointed out that not only the medical evidence but also the deposition of the eye witnesses who were very much present in the scene of occurrence during the attack by the accused supported the theory of the prosecution and helped in proving the guilt of the accused.

8. On a perusal of the judgment, it is found that A1 and A2 were carrying weapons, namely, screw driver and a knife with which both of them attacked the victim Tamilselvan causing his death. The other accused were accomplices and though A6 was carrying a sickle in her hand, she only attacked P.W.1, as per the prosecution theory, causing only a simple injury. The other accused persons were not carrying any weapon.

9. While CrI M.P. No.9676 of 2021 is filed by Oviyaraj (A5), CrI.M.P. No.9677 of 2021 is filed by Vinoth (A1), Ranjith Kannan (A2), Neelamegam (A3), Sekar (A4) and Kalaivani (A6). At this juncture, the merits of the case cannot be gone into in order to assess or conclude as to whether the prosecution had proved their case beyond any reasonable doubts. However, A3 to A5 who did not carry any weapon were in no way involved in causing any injuries on the victim as well as the injured witness P.W.1. As regards A6, though she was carrying a sickle, had attacked and caused simple injury to P.W.1. Therefore, their petitions for suspension of sentence can be allowed. Since A1 and A2 had attacked the victim and caused his death, no leniency can be shown on them for grant of suspension of sentence at this stage.

10. At this juncture, it is pertinent to point out that the Supreme Court, in **Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi)**, has considered **Kashmira Singh vs. State of Punjab** and has held as follows:

"30..... In the above cases, it has been observed that once a person has been convicted, normally, an appellate court will proceed on the basis that such person is guilty. It is no doubt true that even thereafter, it is open to the appellate court to suspend the sentence in a given case by recording reasons. But it is well settled, as observed in *Vijay Kumar [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195 : JT 2002 Supp (1) SC 60]* that in considering the prayer for bail in a case involving



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a serious offence like murder punishable under Section 302 IPC, the Court should consider all the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the desirability of releasing the accused on bail after he has been convicted for committing serious offence of murder, etc. It has also been observed in some of the cases that normal practice in such cases is not to suspend the sentence and it is only in exceptional cases that the benefit of suspension of sentence can be granted."

11. In the result,

- 1) The Crl.M.P. No.9676 of 2021 is allowed and Crl. M.P. No.9677 of 2021 is partly allowed.
- 2) The petition in Crl. M.P. No.9677 of 2021 as regards Vinoth (A1) and Ranjith Kannan (A2) is dismissed.
- 3) The substantial portion of the sentence imposed on Neelamegam (A3), Sekar (A4), Oviyaraj (A5), Kalaivani (A6) is suspended and they are enlarged on bail on the following conditions.



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- (i) Each of the above petitioners/accused shall execute a bond for a sum of Rs.25,000/-, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the Principal District and Sessions Judge, Tiruvarur;
- (ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity; and
- (iii) The petitioners shall appear before the respondent/police everyday at 10.30 a.m. for a period of four weeks and thereafter, the petitioners shall appear before the trial Court on the first working day of every month at 10.30 a.m. until the disposal of the appeal and if they are not able to appear before the trial Court on any day, they shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of their absence, as directed by the trial Court.

-sd/-
18/02/2022

This order, on being produced, be punctually observed and carried into execution by all concerned

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Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL DISTRICT AND SESSIONS JUDGE,
THIRUVARUR.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
NEEDAMANGALAM POLICE STATION,
THIRUVARUR DISTRICT.



4 THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.

6 THE SUPERINTENDENT OF PRISON,
SPECIAL PRISON FOR WOMEN AT TIRUCHIRAPALLI.

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+1 C.C. to M/S. A.V.ARUN FOR A5 Advocate on payment of necessary charges SR.NO.2598

+1 C.C. to M/S.K.M.SUBRAMANIAM Advocate on payment of necessary charges SR.NO.2585

Order

in
CRL MP.9676 & 9677/2021
in
CRL A.158/2021

Date :18/02/2022

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format

TA-21/02/2022