

Crl.M.P.No.3364 of 2016

in

Crl.A.No. 218 of 2016

Dr. P.DEVADASS, J.

The sole accused in the Sessions Case in S.C.No.73 of 2014 on the file of the learned Additional Sessions Judge, Ariyalur, seeks suspension of sentence of his imprisonment.

2. The accused has been tried for an offence under Section 302 IPC. Ultimately, the trial Court convicted and sentenced him as under:-

Accused	Conviction	Sentence
Accused	(i) 304 (ii) IPC	Ten years R.I and fine Rs.10,000/-, i/d. one year S.I.
	(ii) 294 (b) IPC	Fine Rs.500/-, i/d. one week S.I.

Fine amount paid. Now he is lodged in Central Prison, Trichy.

3. Father of PW.1 has been killed. It is the version of the prosecution that his death was caused by the accused.

4. Relying on the evidence of the prosecution, the trial Court had convicted and sentenced the accused as stated above.

5. According to the learned counsel for the petitioner, PW.1 has been projected in this case as an eye witness, who is the author of the F.I.R. However, the prosecution has not established its case beyond all reasonable doubts. The evidence of PW.1 is doubtful. His oral evidence has not been substantiated by the medical evidence. There are contradictions as to the weapon of the offence, more particularly the nature of the weapon. There is *prima facie* case in favour of the petitioner. Further, the accused, who is now 23 years old, was on bail throughout the trial Court proceedings. In the circumstances, he may be granted appeal bail.

6. On the other hand, the learned Additional Public Prosecutor submitted that the contradictions projected by the defence may be a difference, but they are not material contradictions. There is no *prima facie* case in favour of the petitioner. In the circumstances, he is not fit for grant of appeal bail.

7. I have anxiously considered the rival submissions, perused the trial Court's judgment and the evidence referred to by both sides.

8. This case is based on the evidence of an eye witness, viz., PW.1. Thirumurugan. He is the son of the deceased. Just prior to the occurrence, an

incident took place. That is the immediate cause for the occurrence. Already there was no love lost between both sides with regard to water pipe connection to their agricultural lands.

9. On the occurrence day, relating to the said dispute scuffle took place between both sides. On coming to know about this, in order to question this, PW.1 took his father to the accused. At the occurrence place, the occurrence is alleged to have been taken place. In the incident PW.1's father suffered death.

10. The hope of prosecution is mainly on PW.1. The edifice of the prosecution case is mainly built upon the earliest version of PW.1 given in Ex.P1 complaint. It is a sheet-anchor in this case. In a criminal case, more particularly in a murder case, the evidence of an expert like a Doctor, although not a substantive evidence, supplies corroborative evidence as to the prosecution version of the harm caused to the deceased.

11. Now in this case in the F.I.R, the specific version of PW.1 is that he has witnessed the occurrence and he had seen the accused beating his father with a stick on the right side of the neck of his father. In his evidence, he said that his father has been assaulted on his head. However, PW.12, the Doctor,

who performed the autopsy on the dead body of the deceased noticed injury on the opposite side. In such circumstances, the question is whether the testimony of PW.1 with such vital contradiction could be believed and safely a conviction could be recorded. There are certain eminently arguable points which are required to be examined while hearing the main Criminal Appeal. In the circumstances, I find prima facie case in favour of the petitioner. Further, the petitioner was on bail throughout the trial Court proceedings. It is also a fact that it will take some time for the disposal of this Criminal Appeal. There is no allegation that he will flee away from justice, nor he indulged in similar offences, nor he had misused his liberty while he was on bail during the trial Court proceedings. In the circumstances, I am inclined to grant him appeal bail.

12. Ordered as under:

- (i) Appeal bail granted to the petitioner;
- (ii) His Sentence of imprisonment alone is suspended;
- (iii) There shall be two sureties, who shall execute a bond for Rs.20,000/- (Rupees twenty thousand only) and also by the petitioner for a like sum to the satisfaction of the learned Judicial Magistrate, Ariyalur.
- (iv) Petitioner shall also appear on the first working day of every month at 10.30 a.m before the said Court until further orders.

mra

13.04.2016

To

1. The Additional Sessions Judge,
Ariyalur.
2. The Judicial Magistrate,
Ariyalur.
3. The Superintendent
Central Prison
Trichy.
4. The Additional Public Prosecutor
High Court, Madras.
5. The Inspector of Police,
Thirumanoor Police Station
Ariyalur District.

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