



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Tuesday, the Twentieth day of September Two Thousand Sixteen

PRESENT

The Hon`ble Mr.Justice S.NAGAMUTHU
and

The Hon`ble Mr.Justice M.V.MURALIDARAN

CRL MP(MD) No.4069 of 2016

IN

CRL A(MD) No.175 of 2016

1 MURUGAN @ MOTTULU MUGURAN
2 PANDI @ MOTTULU PANDI
3 RAJA
4 BALAMURUGAN
5 BOOMINATHAN

...PETITIONERS/PETITIONERS.

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
AVANIYAPURAM POLICE STATION,
MADURAI.
CRIME NO. 362/2012

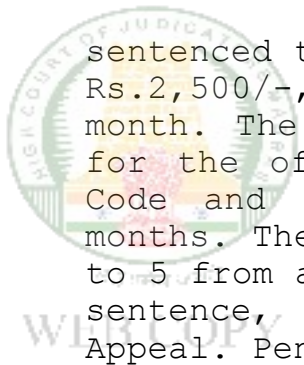
... RESPONDENT/RESPONDENT.

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence imposed on the petitioners vide judgment dated 13.04.2016 in S.C.No. 116 of 2014 on the file of V Additional District and Sessions Judge, Madurai pending disposal of the above Crl.A.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.G.R.SWAMINATHAN for T.ANTONY ARUL RAJ, Advocate for the petitioners and of M/S.T.MOHAN, Additional Public Prosecutor, on behalf of the Respondent, the court made the following order:-

[Order of the Court was made by S.NAGAMUTHU, J.]

The petitioners are the accused Nos.1 to 5 in S.C.No.116 of 2014 on the file of learned Fifth Additional District and Sessions Judge, Madurai. Including these petitioners, totally there were eleven accused. The judgment of the Trial Court indicates that all these accused stood charged for the offences punishable under Sections 147, 148, 342, 302, 506(ii), 212 r/w 120(b) and 149 of the Indian Penal Code. The Trial Court, by judgment dated 13.04.2016, has acquitted the accused Nos.6 to 11 from all charges. The Trial Court has, however, convicted these accused Nos.1 to 5/appellants herein alone under Section 302 r/w 149 of the Indian Penal Code and



sentenced them to undergo imprisonment for life and to pay a fine of Rs.2,500/-, in default, to undergo simple imprisonment for one month. The Trial Court, further, convicted the accused Nos.1 and 2 for the offence punishable under Section 342 of the Indian Penal Code and sentenced them to undergo simple imprisonment for six months. The Trial Court, has, however, acquitted these accused Nos.1 to 5 from all the other charges. Challenging the said conviction and sentence, the petitioners have come up with the present Criminal Appeal. Pending appeal, they seek suspension of sentence.

2. We have heard Mr.G.R.Swaminathan, the learned counsel for the petitioners and the learned Additional Public Prosecutor appearing on behalf of the State. We have also perused the records carefully.

3. In this case, P.Ws.2 to 5 were examined as eye witnesses to speak about the entire occurrence. But, unfortunately, they did not support the case of the prosecution. Thus, they were treated as hostile. P.W.1, the son of the deceased, did not see the occurrence at all. According to the prosecution case, on having a phone message, P.W.1 rushed to the place of occurrence and then, took the deceased to the hospital. The further case of the prosecution is that the deceased himself made a oral statement, which was reduced into writing by P.W.1 and then, the same was presented to the police for registration of the case. That statement has been marked as Ex.P.1. The Trial Court has relied on the said statement as dying declaration and convicted all these five accused. The learned counsel would submit that the said course adopted by the Trial Court is not correct and the Trial Court ought to have rejected the same.

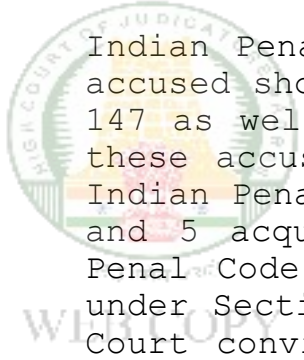
4. In our considered view, there can be no dispute that the statement of the deceased made to P.W.1, which was reduced into writing, is certainly admissible in evidence as dying declaration. But the question is whether it can be believed or not.

5. The learned counsel has pointed out lot of infirmities in the same and has pointed out that Ex.P.1 is shrouded with lot of doubts.

6. Though a dying declaration is a substantive piece of evidence, if there are doubts, regarding the same, prudence requires that the Court should look for corroboration from independent sources. Here, in this case, there is no other evidence available. For these reasons, in our considered view, the petitioners are entitled for suspension of sentence.

7. The learned counsel for the petitioners would point out that the Trial Court has committed a number of irregularities as well as illegalities in the judgment. We are pain to agree with the said submission made by the learned counsel.

8. As we already pointed out, the Trial Court has stated that all the accused stood charged for the offences punishable under Sections 147, 148, 342, 302, 506(ii), 212 r/w 120(b) and 149 of the



Indian Penal Code. It is not understandable as to how a particular accused should be simultaneously charged for offences under Sections 147 as well as 148 IPC. The Trial Court has, ultimately, acquitted these accused Nos.1 to 5 from the charge under Section 147 of the Indian Penal Code. There is no finding whether the accused Nos.1,2,4 and 5 acquitted from the charge under Section 148 of the Indian Penal Code or not. Having acquitted these accused from the charge under Section 147 IPC, it is not understandable as to how the Trial Court convicted them by invoking Section 149 IPC, so as to punish them for offence under Section 302 r/w 149 IPC. The Trial Court has, further, stated that the accused Nos.1, 2 and 6 to 10 are not found guilty under Section 506(ii) r/w 149 IPC. When the Trial Court found A-1 to A-5 as members of unlawful assembly and has convicted them by invoking Section 302 r/w 149 IPC, it is not understandable as to how the Trial Court found that the accused Nos.1 to 5 are not guilty for offences under Sections 506(ii) r/w 149 IPC. There are lot of other infirmities also in the judgment.

9. In yet another appeal, which came up for hearing before us, wherein also the judgment had been delivered by the same Judge, having noticed the infirmities in the judgment, we directed the Registry to send the Judicial Officer concerned for judicial training for three consecutive training programmes. The judgment in the present case justifies further the action taken by us. She needs judicial training and thereafter only, she could be allowed to handle the cases involving capital punishment.

10. In the result, the petition is allowed and the substantive sentence of imprisonment imposed on the petitioners/accused Nos.1 to 5 alone is suspended pending disposal of the above said CrI.A.(MD) No.175 of 2016 and the petitioners are directed to be enlarged on bail on each of them executing 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 the learned Judicial Magistrate No.VI, Madurai, subject to a condition that they shall report before the Committal Court, once in a month, i.e., on the first working day of every English Calendar month at 10.30 a.m. until further orders.

sd/-

20/09/2016

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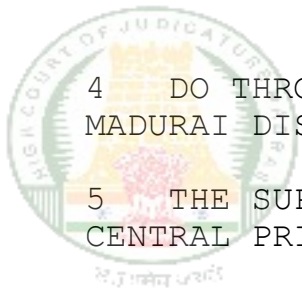
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE, MADURAI.

2 DO THRO THE PRINCIPAL SESSIONS JUDGE,
MADURAI DISTRICT.

<https://hcservices.ecourts.gov.in/hcservices/>
3 THE JUDICIAL MAGISTRATE NO.VI,
MADURAI.



4 DO THRO THE CHIEF JUDICIAL MAGISTRATE,
MADURAI DISTRICT.

5 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.

6 THE ADDL.PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

7 THE INSPECTOR OF POLICE
AVANIYAPURAM POLICE STATION,
MADURAI.

Copy to: 1 THE REGISTRAR (ADMIN).,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI
2 THE SECTION OFFICER,
"B" SECTION
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

+1. C.C. to M/S.T.ANTONY ARUL RAJ Advocate SR.No.54401.

ORDER
IN
CRL MP (MD) No.4069 of 2016
IN
CRL A (MD) No.175 of 2016
Date :20/09/2016

AM/AAL.MPA/SAR-LIB/21.09.2016/4P/11C