



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

Friday, the Seventh day of October Two Thousand Sixteen

PRESENT

The Hon`ble Mr.Justice S.NAGAMUTHU
and

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

CRL MP(MD) No.8320 of 2016

IN

CRL A(MD) No.324 of 2016

P.KARTHICK

... APPELLANT/ACCUSED-A8

Vs

THE STATE REP.BY ,
THE INSPECTOR OF POLICE,
CBCID POLICE STATION,
MADURAI CITY,
MADURAI
CRIME NO.2539/2005,
MATHICHIYAM POLICE STATION,
MADURAI.

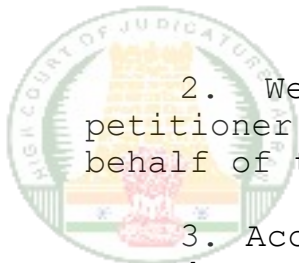
... RESPONDENT/COMPLAINANT

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 by the Learned IV Additional District Sessions Judge, Madurai in S.C No. 403 of 2010 dated 28.01.2016 and release the Petitioners on bail pending disposal of the above Criminal Appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S P.ANDIRAJ, Advocate for the petitioner and of MR.C.MAYILVAHANA RAJENDRAN, 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 petitioner is the eighth accused in S.C.No.403 of 2010 on the file of the learned Fourth Additional District and Sessions Judge, Madurai. There were a total number of 12 accused in this case. Two persons died during trial. Out of the rest of 10 accused, the petitioner alone has been convicted and all the others have been acquitted. He has been convicted for the offences punishable under Sections 148, 449 and 302 of the Indian Penal Code. The maximum punishment imposed upon him is imprisonment for life. Challenging the said conviction and sentence, the petitioner has come up with the present Criminal Appeal. Pending appeal, he seeks suspension of sentence.



2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing on behalf of the State. We have also perused the records carefully.

3. According to the case of the prosecution, the deceased, who was the Proprietor of Vaigai TV, was sitting in his Office alone and at that time, three people, who were previously not known, entered into the Office, hacked him to death with aruval and fled away. Initially, the identity was not known. Subsequent investigation revealed that the accused 8 to 10 were engaged as hirelings by the other accused. The prosecution relies on the identification made by the eye witnesses during trial, which corroborated by the identification made by P.Ws.1 to 6 during Test Identification Parade.

4. The learned counsel would raise two points. The first point is that the Trial Court has extensively narrated the statements of witnesses recorded under Section 161(3) of the Criminal Procedure Code and ultimately, extracted the same and relied on the same to come to the conclusion that the petitioner was involved in the crime. The learned counsel would next contend that there was an inordinate delay in conducting the Test Identification Parade, which would make the credibility of the dying declaration lost.

5. We have considered the above submissions.

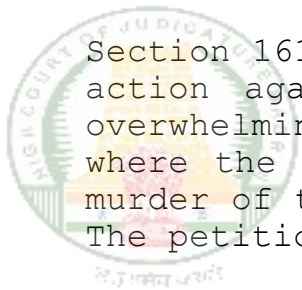
6. So far as the delay in conducting the Test Identification Parade is concerned, on that score alone, we cannot disbelieve the Test Identification Parade. Every delay is explainable as every human conduct is explainable. In this particular case, why such delay had occurred in conducting the Test Identification Parade is to be explained by the prosecution.

7. The learned Additional Public Prosecutor would submit that the same has been explained.

8. Whether such explanation is really available and whether the same is plausible, are all matters to be deeply gone into only at the time of trial and not at this stage.

9. Now, turning to the first limb of the argument that the learned Judge has referred extensively to the statements of witnesses recorded under Sections 161(3) of the Criminal Procedure Code, we regret that the learned Sessions Judge is ignorant of the bar contained in Section 162 of the Criminal Procedure Code, which completely bars the usage of the statement as substantive evidence in Court during trial.

10. We issue a direction to the Registry to mark a copy of this order to the learned Judge, who authored the judgment, wherever he is, to impress upon him that he was not right legally in referring to the statements recorded under Section 161(3), with a further warning that if he continues to rely on the statement recorded under



Section 161(3) as substantive evidence, we may have to recommend for action against him. At any rate, since in this case, there is overwhelming evidence against the petitioner and since it is a case where the petitioner was engaged as a hireling for money to commit murder of the deceased, we are not inclined to suspend the sentence. The petition is, therefore, dismissed.

sd/-

07/10/2016

WEB COPY

/ TRUE COPY /

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

TO

- 1 THE IV ADDITIONAL DISTRICT SESSIONS JUDGE, MADURAI.
- 2 THE INSPECTOR OF POLICE, CBCID POLICE STATION, MADURAI CITY,
MADURAI, MATHICHIYAM POLICE STATION, MADURAI.
- 3 THE ADDITIONAL PUBLIC PROSECTUOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- 4 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

CSL/EM-MPA/SAR-I/24.10.2016: 2p/5c

ORDER

IN

CRL MP (MD) No.8320 of 2016

IN

CRL A (MD) No.324 of 2016

Date : 07/10/2016