



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.08.2014

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE V.S.RAVI

M.P.(MD).No. 1 of 2014
in
Crl.A.(MD) No.324 of 2013

Nallusamy aged 51 years
S/o.Palaniyadi,
Keelakannukulam,
Moovanur, Musiri Taluk,
Trichy District.

. . . Petitioner /Appellant

Vs.

State Represented by
Inspector of Police,
Vathalai Police Station,
Thiruchirappalli District.
(Cr.No.30 of 2012)

... Respondent /complainant

The Petition filed under Section 389(i) Cr.P.C. to suspend the sentence imposed on the petitioner by the Principal Sessions Judge, Thiruchirappalli in S.C.No.5 of 2013, dated 10.09.2013 and release the petitioner on bail pending disposal of the criminal appeal.

For petitioner :Mr.T.Senthil Kumar

For respondent :Mr.R.Ramachandran
Additional Public Prosecutor

ORDER

V.S.RAVI, J.

The Petitioner/Appellant has filed the present petition under Section 389(i) Cr.P.C. seeking suspension of sentence imposed on him by the Court below in the sessions case in S.C.No.5 of 2013 by its judgment, dated 10.09.2013.

2. The petitioner is arrayed as A1 and he has been convicted for the offence under Section 302 IPC and sentenced to undergo life imprisonment and to pay fine of Rs.1,000/-.

<https://hcservices.ecourts.gov.in/hcservices/>

3. Aggrieved by the conviction and sentence, the petitioner/Appellant has preferred appeal in Crl.A.(MD).No.324 of 2013 and filed M.P.(MD).No.1 of 2014 seeking suspension of sentence, pending appeal.



4. It is contended in the petition and also by the learned Counsel appearing on behalf the petitioner that the Trial Court ought to have seen that the prosecution has not proved the place of occurrence and erred in convicting the petitioner without any substantial evidence. The judgment of the Lower Court is based only on presumption, surmises and conjectures which are not relevant to the circumstances to the case. The Trial Court failed to consider that the origin of FIR itself doubtful and real fact has been suppressed by the prosecution agency and the same would be fatal to the prosecution case. There are lot of infirmities in the evidence of eyewitness and there has been no valid evidence for convicting the appellant under Section 302 IPC. The prosecution has not proved the case beyond all reasonable doubts regarding arrest of the petitioner and the alleged recovery made under Section 27 of Evidence Act. The petitioner's injury has not been explained by the prosecution. Further, A2 has been already granted bail.

5. On the other hand, the learned Additional Public Prosecutor has vehemently objected to suspend the sentence as the prosecution has proved the charges against A1 beyond all reasonable doubt and the occurrence took place in the house of the victim and the evidence of PW1 and PW2 and the independent witnesses PW3 to PW6 have categorically proved the case of the prosecution and that the grant of bail to A2 would not give any adequate reason for the suspension of sentence for A1 and therefore, he has strongly objected to suspend the sentence.

6. Heard the learned Counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the State and this Court also perused the materials available on record.

7. The direct point raised for consideration in the present case is:-

Whether the petitioner is entitled to get suspension of sentence by granting bail pending appeal for the reasons stated in the present petition?

8. PW2 in his evidence has categorically stated that the accused Nallusami has been taken by the police at 09.30 p.m. PW7 in her evidence has stated that Vathalai Policemen have taken them and her father has been taken to the Court and she has been left in her parents house. PW9 in his evidence has stated that on 28.02.2012, the Inspector of Vathalai Police Station has asked them to come to police station and they also went to the police station at 03.00 hrs and from there, the Inspector took them near to Musiri Kaikatti, wherein the Inspector arrested Nallusamy and enquired and at that time Nallusami gave confession statement. PW10/postmortem doctor in his evidence has stated that if a person runs fast and fell down in a blunt place, that person would suffer injuries. PW16 in his evidence has stated that on 28.02.2012, when he is on search for the accused, at 16.00 hrs he arrested the accused Nallusamy near Musiri Kaikatti and recorded his voluntary confession statement in the presence of Kattu Neyveli Village Administrative Officer, Balakrishnan and Village Assistant Chakravarthi. In the complaint Ex.P1, PW1 has categorically stated that A2 has taken the wooden log nearby and also assaulted on his lips, left elbow and when this father Vayitruppovan interfered, **A1 assaulted him with hands** and kicked him down and in that process, his father fell down. He noticed that his father has been lying dead. Whereas in the impugned judgment it



has been stated that A1 assaulted the deceased Vavitrupoovan **with wooden log** and kicked him down and kicked with his legs on neck, chest and stomach and murdered him. Therefore, there is vital and material contradictions.

9. The petitioner/A1 has filed the above mentioned appeal by raising several grounds in the grounds of appeal. Further, in the petition, the petitioner has specifically stated that the evidence of the prosecution witnesses are not cogent and there are several contradictions in the evidence and the Trial Court without considering the above material details, has convicted the accused under Section 302 IPC. Further, it is specifically pointed out on behalf of the petitioner that the Trial Court has not appreciated the testimonials of the prosecution witnesses in proper perspective and it has been specifically pointed out on behalf of the petitioner that there are innumerable contradictions and conflictions in the evidence of prosecution witnesses. As pointed out on behalf of the petitioner, there are several arguable points in the present appeal.

10. Further, when the appellate Court finds that due to practical reasons appeal cannot be disposed of expeditiously, the appellate Court must bestow special concern in the matter of suspending the sentence, so as to make the appeal right meaningful and effective. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time.

11 From the submissions made on behalf of the petitioner, this Court finds that there are substantial and arguable points in the present case. Further, it is also seen that if certain stringent conditions are imposed, there is no chance for the accused to abscond. Further, it is seen that various points raised in the grounds of appeal require an indepth/threadbare examination at the time of final hearing of the main appeal and also on going through the various grounds raised in the memorandum of criminal appeal and considering the fact that already A2 has been granted bail, at this stage, this Court, to prevent aberration of justice, suspends the substantial sentence of imprisonment alone pending disposal of the above criminal appeal and order to release the petitioner/A1 on bail, on his executing a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) each with two sureties each for a likesum to the satisfaction of the learned Judicial Magistrate, Musiri and on further condition that the petitioner/A1 shall appear before the said Court daily on all working days at 10.30 a.m. until further orders.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar



To.

1. The Principal Sessions Judge, Trichy.
2. The Judicial Magistrate, Musiri.
3. The Chief Judicial Magistrate, Trichy.
4. The Superintendent Central Prison, Trichy.
- 5 The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 6 The Inspector of Police, Vathalai Police Station,
Thiruchirappalli District.

TS/06.08.2014/4P-7C

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