



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

Wednesday, the Twenty Fourth day of May Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice M.V.MURALIDARAN
and
The Hon`ble Mr.Justice C.V.KARTHIKEYAN

CRL MP (MD) No.4252 of 2017
IN
CRL A (MD) No.206 of 2016

1 SURIYA SEKAR ... PETITIONER NO.1/APPELLANT/ACCUSED NO.1
2 SELVAM ... PETITIONER NO.2/APPELLANT/ACCUSED NO.2

Vs

STATE REPRESENTED BY
THE INSPECTOR OF POLICE,
ARUMUGANERI POLICE STATION,
TIRUCHENDUR, TUTICORIN DISTRICT.
IN CR.NO.233 OF 2010. ... RESPONDENT/RESPONDENT/COMPLAINANT

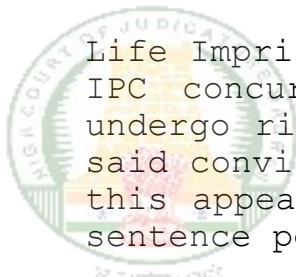
Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence imposed upon the Petitioners/Appellants/Accused Nos.1 and 2 in S.C.No.191 of 2013 dated 16.12.2013 on the file of the Honourable II Additional Sessions Judge, Thoothukudi, by granting bail, till the disposal of the 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.K.K.RAMAKRISHNAN, Advocate for the petitioner and of MR.C.RAMESH Additional Public Prosecutor for the Respondent the court made the following order:-

[Order of the Court was made by M.V.MURALIDARAN, J]

The petitioners filed this Criminal Miscellaneous Petition pleaded to suspend the sentence imposed upon the Petitioners/Appellants/Accused Nos.1 and 2 in S.C.191 of 2013 dated 16.12.2013 on the file of the Hon'ble II Additional Sessions Judge, Thoothukudi, by granting bail, till the disposal of the Criminal Appeal.

2. This Criminal Appeal is against the Judgment and order of conviction and sentence passed by the Learned II Additional District and Sessions Court, Thoothukudi in S.C.No.191 of 2013 dated 16.12.2013. The Petitioners have been arrayed as First and Second Accused. The Petitioners were convicted and sentenced to undergo



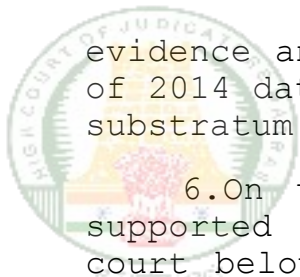
Life Imprisonment for Offence under Section 302 r/w 120-B and 302 of IPC concurrently and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for two months. Aggrieved against the said conviction and sentence, the Petitioners have come forward with this appeal. This Petition is filed seeking for suspension of sentence pending disposal of the appeal.

FACTS OF THE CASE

3.The case of the prosecution is that prior to the date of occurrence, i.e on 02.06.2010, when P.W.8 was taking bath in her house, the accused A.2 looked at her and the same was reported to her brother Uthayasuriyan (deceased) and on the next day the deceased beaten the accused No.2 and hence there was an enmity between the deceased and the accused No.2. So A.2 along with other accused and with the deceased accused Sathiya and Maria Antony entered into a criminal conspiracy on 14.06.2010 at 8.00 pm in the pathway near Veerakalliamman kovil to murder Uthayasuriyan and in pursuance of their criminal conspiracy, on 15.06.2010 at about 04.30 pm, the deceased Uthayasuriyan was coming out of the DCW Company along with his friend Farook after completing their work, the accused 1 & 2 and the deceased accused Sathya with knives on their hands stabbed Uthayasuriyan indiscriminately causing injuries all over his body and ran away. PW.13 Ramakrishnan who is standing along with PW 1, Ammachar, made a complaint to PW17, Sub Inspector of Police, Arumuganeri Police Station and the FIR was registered at about 17.00 hrs on the very same day against the accused 1 & 2 and the deceased Sathya in Cr.No.233 of 2010 under Section 302 of IPC.

4.The Trial Court framed two charges against A1 to A 4 under Section 120-B r/w 302 of IPC and u/s.302 of IPC against A 1 & A 2, convicted all the accused for the respective Charges framed against them under sections 120-B r/w 302 and 302 of IPC and sentenced to undergo Life Imprisonment.

5.The learned counsel for the Petitioners would submit that the Hon'ble Trial Court miserably failed to appreciate the genuine and credibility of Exhibit P.1 and the delay in sending the FIR within 24 hours from the time of its registration and the evidence of PW1 and PW 13 suffers from serious material contradictions from their earlier statements and the evidence deposed in Court. The ocular witnesses have not stated the overt acts of the Petitioners before PW19. PW1 and PW 13 purposely disclosed the names of the accused after discussion and deliberation with their group members and the names of the accused No.1 and 2 was stated before PW 16 which cannot be relied upon since both the witnesses were not in the place of occurrence. PW 11 in his statement made to the investigation officer PW 19 alleged that he heard the conversations of the petitioners with other accused conspiring to kill the deceased when he was travelling through the Veerakalliamman Kovil which is one mile away from his residence. PW.11 deposed before the Court that he heard the conversation in Thenkasi Pandaga salai road where his residence was located. He also accepts that Veerakalliamman Kovil is one mile away from his residence. But this evidence was not corroborated by any of the Prosecution Witnesses. On appreciating the evidence of Conspiracy, this Hon'ble Court disbelieved the



evidence and acquitted the accused 3 and 4 in Criminal Appeal No.30 of 2014 dated 16.12.2014 filed by them separately which dislodge the substratum of the Prosecution case.

6. On the other hand the learned Additional Public Prosecutor supported the Judgment of conviction and sentence passed by the court below and contended that the Court below has appreciated the evidence in a proper perspective and opposed the granting of suspension of sentence.

7. Considering the Submissions made by either side, we are of the considered view that there are arguable points involved in this appeal. The Petitioners already suffered incarceration of more than three years. Therefore, the Petitioners can be granted suspension of sentence pending disposal of the appeal.

8. In the result, the substantive sentence of imprisonment imposed on the Petitioners is suspended on their executing a bond of for a sum of Rs.10,000/- with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate -1, Kovilpatti. The petitioners are directed to report before the learned Judicial Magistrate No.I, Kovilpatti on first working day of every English calender month until further order.

sd/-
24/05/2017

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)

TO

- 1 THE II ADDITIONAL SESSIONS JUDGE, THOOTHUKUDI
- 2 THE JUDICIAL MAGISTRATE NO.I, KOVILPATTI
- 3 THE CHIEF JUDICIAL MAGISTRTE, THOOTHUKUDI
- 4 THE INSPECTOR OF POLICE,
ARUMUGANERI POLICE STATION, TIRUCHENDUR, TUTICORIN DISTRICT.
- 5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- 6 THE SUPERINTENDENT CENTRAL JAIL, PALAYAMKOTTAI

+1. C.C. to M/S.K.K.RAMAKRISHNAN Advocate SR.No.22706

GJM/CM/SAR-3-1.6.17-3P-8C

ORDER
IN
CRL MP (MD) No.4252 of 2017
IN
CRL A (MD) No.206 of 2016
Date : 24/05/2017