



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

Tuesday, the Tenth day of July Two Thousand Eighteen

PRESENT

The Hon`ble Mr.Justice C.T.SELVAM
and

The Hon`ble Mr.Justice A.M.BASHEER AHAMED

Crl.MP.(MD)No.295 of 2018 in Crl.A.(MD) No.27 of 2018
and Crl.M.P.(MD) Nos.305 and 306 of 2018
in Crl.A.(MD)No.28 of 2018

SIVAKUMAR

... PETITIONER/ APPELLANT/
3rd ACCUSED
in Crl.MP.(MD)No.295 of 2018
in Crl.A.(MD) No.27 of 2018

SENTHILKUMAR

... PETITIONER/ APPELLANT/
2nd ACCUSED
in Crl.M.P.(MD) No.305 of 2018
in Crl.A.(MD)No.28 of 2018

ANAND

... PETITIONER/ APPELLANT/
1st ACCUSED
in Crl.M.P.(MD) No.306 of 2018
in Crl.A.(MD)No.28 of 2018

Vs

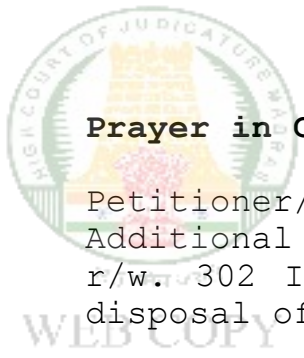
1 STATE REP.BY
THE INSPECTOR OF POLICE,
THIRUKALAR POLICE STATION.
CRIME NO.59 OF 2008.

2 THE ASSISTANT SUPERINTENDENT OF POLICE,
MUTHUPETTAI SUB DIVISION,
TIRUVARUR DISTRICT.

... RESPONDENTS/ COMPLAINANTS
IN ALL THE PETITIONS

PRAYER IN Crl.MP.(MD)No.295 of 2018 in Crl.A.(MD) No.27 of 2018:

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court mayl be pleased to suspend the sentence imposed to the Petitioner/Appellant, in S.S.C.No.39 of 209 on the file of 1st Additional District Judge (PCR), Thanjavur, for convict U/s.120(b) r/w 302 IPC and 302 r/w 109 of IPC dated 11.12.2017 and pending disposal of the Criminal Appeal.



Prayer in CRL MP(MD). 305/ 2018 in Crl.A.(MD)No.28 of 2018

To suspend the sentence imposed to the Petitioner/Appellant, in S.S.C.No.39 of 2009 on the file of I Additional District Judge (PCR), Thanjavur, for convict U/s.120 (b) r/w. 302 IPC and 302 r/w. 109 of IPC dated 11.12.2017 and pending disposal of the Criminal Appeal.

Prayer in CRL MP(MD). 306/ 2018 in Crl.A.(MD)No.28 of 2018

To suspend the sentence imposed to the Petitioner/Appellant, in S.S.C.No.39 of 2009 on the file of I Additional District Judge (PCR), Thanjavur, for convict U/s.120 (b) r/w. 302 IPC and 302 IPC dated 11.12.2017 and pending disposal of the Criminal Appeal.

Order : These petitions coming on for orders upon perusing the petitions filed in support thereof and upon hearing the arguments of Mr.R.M.SIVAKUMAR, Advocate for the petitioner in CRL MP(MD)No.295 of 2018 in CRL A(MD)No.27 of 2018 and Mr.G.SANKARAN, Advocate for Mr.S.VENKATESAN, Advocate for petitioners in Crl.M.P.(MD) Nos.305 and 306 of 2018 in Crl.A.(MD)No.28 of 2018 and of Mr.S.CHANDRASEKAR, Additional Public Prosecutor on behalf of the Respondents in all the petitions, the court made the following order:-

[Order of the Court passed by **C.T.SELVAM, J.**]

Petitioners, arrayed as accused Nos.3, 2 and 1 in S.S.C.No.39 of 2009, on the file of Learned I Additional District and Sessions Judge (P.C.R.), Thanjavur, and under judgment dated 11.12.2017, A1 has been convicted for the offence under Sections 120(b) r/w 302 and 302 I.P.C. and sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo one year R.I. for each of the offences and A2 and A3 were convicted under Sections 120(b) r/w 302 and 302 r/w 109 I.P.C. and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- each, in default, to undergo 6 months R.I. for each of the offences. Petitioners have moved the above miscellaneous petitions, seeking relief of suspension of sentence pending appeals.

2. Heard learned counsel for petitioners and learned Additional Public Prosecutor appearing for respondent.

3. The case of the prosecution is that due to quarrel between A1 and his father with the deceased regarding lease of lands, deceased dragged A1 on the road by tying his hand in a half naked position. In retaliation, all the accused conspired to do away the deceased, pursuant to which on 16.10.2008, at about 1.00 p.m., A3, who was driving the car of the deceased stopped the same near Panniyur Graveyard as if towards answering the call of nature. A1 and A2 stopped their motorcycle in front of the said Car, picked up a quarrel with the deceased and when the deceased came out of the car, A1 attacked him with Aruval indiscriminately and caused his death on the spot. A case was registered on the same day and the



same on completion of investigation, filing of final report and committal came up for trial before learned I Additional District and Sessions Judge (P.C.R), Thanjavur in S.S.C.No.39 of 2009 and under judgment dated 11.12.2017, Accused was convicted and sentenced as stated above.

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4.Learned counsel for A1 and A2 submits that the occurrence allegedly had taken place on 16.10.2008 at about 1.00 p.m. and the F.I.R. had been registered at the instance of P.W.1/wife of the deceased, who was residing 28 kms. away and who proceeded to the scene on hearing of the occurrence. P.W.22, who was then present at the scene registered the complaint at her instance at 2.00 p.m. Both the F.I.R. and the subsequent request for postmortem made by the Inspector of Police at 4.45 p.m. inform the position that the assailants were unknown. However, the prosecution has examined P.Ws.2 and 3 as eye-witnesses to the occurrence. P.W.1, wife of the deceased has spoken to the presence of P.Ws.2 and 3 at the scene when she arrived there. Learned counsel submits that if P.Ws.2 and 3 were eyewitnesses and were present when P.W.1 came to the scene and from her the complaint was recorded, then the principal assailant and the manner in which assault of the deceased took place would have found mention in the complaint. Learned counsel further submits that A3 has been charged as the driver of the vehicle used by the deceased and of having acted in conspiracy with the other accused. P.W.1 deposed that she saw A3 at the police station on the occurrence day. Further, the evidence of P.W.5 reveals that it was first time that the third accused has been engaged as a driver of the deceased. Therefore, the prosecution theory of conspiracy would not stand. A reading of the evidence of P.W.2 would go to show that the very presence of P.Ws.2 and 3 at the scene is doubtful since she has admitted to having chanced upon the scene while on the way from Thirupattur to Akkaraikottagam, whereas she has admitted that there was a different route away from the scene and which was shorter by 10 kms.

5. Per contra, learned Additional Public Prosecutor, contended that the prosecution has established its case beyond all reasonable doubt and the minor discrepancies found in the evidence of the prosecution witnesses will not affect the prosecution case in its entirety. He strongly opposed to the grant of the relief of suspension of sentence to petitioners.

6. Considering the facts and circumstances of the case and the submission of both sides, this Court considers it appropriate to suspend the substantive portion of sentence imposed on petitioners.

7.Accordingly, the substantive sentence of imprisonment alone is suspended in respect of petitioners / accused and they are directed to be enlarged on bail on condition that they shall execute a bond in a sum of Rs.10,000/- [Rupees ten thousand only] each with two sureties each for a like sum to the satisfaction of the learned I Additional District and Sessions Judge (P.C.R.), Thanjavur, and on



further condition that petitioner shall report before the said Court on the first working day of every month at 10.30 a.m. pending appeal.

sd/-
10/07/2018

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

TO

1 THE 1ST ADDITIONAL DISTRICT AND SESSIONS JUDGE (PCR),
THANJAVUR.

2 THE JUDICIAL MAGISTRATE NO.I, MANNARGUDI.

3 DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TIRUVARUR DISTRICT.

4 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.

5 THE INSPECTOR OF POLICE,
THIRUKALAR POLICE STATION.

6 THE ASSISTANT SUPERINTENDENT OF POLICE,
MUTHUPETTAI SUB DIVISION, TIRUVARUR DISTRICT.

7 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to Mr.R.M.SIVAKUMAR, Advocate, Sr No.12794

+2CC TO Mr.S.VENKATESAN, Advocate, SR Nos.12622,12623

ORDER IN
Crl.MP.(MD)No.295 of 2018 in
Crl.A.(MD) No.27 of 2018 and
Crl.M.P.(MD) Nos.305 and 306 of 2018
in Crl.A.(MD)No.28 of 2018
Date :10/07/2018

MS/MMS/ASVM/16.07.2018/4P.11C