



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

Wednesday, the Nineteenth day of June Two Thousand Nineteen
PRESENT

The Hon`ble Mr.Justice M.SATHYANARAYANAN

and

The Hon`ble Mr Justice B.PUGALENDHI

CRL MP(MD) No.4689 of 2019
IN CRL A(MD) No.238 of 2019

R.SUNDARRAJAN @ KEERATHURAI SUNDHAR ... APPELLANT/ ACCUSED NO.5

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
C-5, KARIMEDU (L&O) POLICE STATION,
MADURAI.
(CRIME NO.99/2013)

... 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 and grant bail to the Appellant/ Accused No.5 against the Judgement in S.C.No.103 of 2014 on the file of the V Additional District and Sessions Judge (FAC) Madurai dated 13.03.2019 in Crime No.99 of 2013 on the file of the respondent police pending disposal of the instant 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.T.THIRUMURUGAN, Advocate for the petitioner and of Mr.S.CHANDRASEKAR, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

(Order of this Court was made by **M.SATHYANARAYANAN, J**)

The petitioner/appellant is arrayed as A5 in S.C.No.103 of 2014 on the file of the Court of V Additional District and Sessions Judge, Madurai and he was tried along with A1 to A4 and A6 and A7. The trial Court has framed the following charges against the accused.

A1	120(B), 147, 148, 341, 342 and 302 I.P.C.
A2	120(B), 147, 148, 342 and 302 I.P.C.
A3, A4, A6 & A7	120(B), 147, 148 and 302 r/w 34 I.P.C.
A5	120(B), 147, 148 and 302 I.P.C.

The trial Court under the impugned judgment dated 13.03.2019, has found him guilty for the commission of the offences under Sections 148, 302 r/w 149 and 341 r/w 149 I.P.C., and sentenced him to imprisonment vide impugned judgment dated 13.03.2019 as follows:-



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Rank of the Accused	Conviction u/s.	Sentence awarded
	148 IPC	To undergo rigorous imprisonment for 3 years
	302 r/w 149 IPC	To undergo imprisonment for life and to pay a fine of Rs.5000/- with a default sentence of 2 months simple imprisonment.
	341 r/w 149 IPC	To undergo simple imprisonment for 1 month.

The sentences were ordered to run concurrently. Challenging the legality of the said conviction and sentence, the petitioner preferred the present appeal and pending appeal, filed the present petition seeking suspension of the substantive sentence of imprisonment.

2.The learned counsel appearing for the petitioner would submit that the alleged murder is on account of the dispute with regard to the cricket match and even as per the prosecution, the deceased was the aggressor and the case of the prosecution was there was an earlier incident at about 5.00 p.m. on 03.02.2013, wherein, there was a wordy quarrel between the deceased and A1 and A1 was pushed down slapped and therefore, A1 hatched a plot on 03.02.2013 at 9.30 p.m. along with A2 to A7 and accordingly, on 04.02.2013 at 6.00 p.m., he along with A2 to A7 armed with lethal weapon committed the offence of murder of the deceased.

3.The primordial submission of the learned counsel appearing for the petitioner is that though P.Ws.1 and 2 said to have supported the case of the prosecution in chief-examination, he totally turned hostile and the only incriminating circumstance projected is as to the confession and recovery and the Village Administrative Officer viz., P.W.23 did not speak anything about the recovery pursuant to the admitted portion of confession of A5 and in any event, the trial Court ought to have granted the benefit of doubt in favour of the accused and acquitted them and since the petitioner is having a bright chance of success in this appeal, prays for suspension of the substantive sentences of imprisonment.

4.Per contra, Mr.S.Chandrasekar, learned Additional Public Prosecutor appearing for the State would submit that though the witnesses initially supported the case of the prosecution, they were not cross-examined on the same day and later on they were recalled and then won over by the accused and since motive for the occurrence has been proved by the prosecution, coupled with the fact of accused repeatedly attacking the deceased and as a consequence of



the injury, he died the trial Court is right in convicting the accused. He also made a submission that the points raised by the appellant/A5 would revolve around appreciation of evidence and hence, prays for dismissal of this petition.

5. This Court has carefully considered the rival submissions and also perused the materials placed before it including the impugned judgment.

6. A perusal of the testimony of P.Ws.1 and 2 would show that the accused repeatedly attacked the deceased and as a consequence he died. The chief examination of P.Ws.1 and 2 were conducted on 23.10.2014 and on that they were not cross-examined and subsequently they were recalled on 24.03.2015, wherein they have totally turned hostile. **In Selvaraj @ Chinnapaiyan v. State represented by Inspector of Police [2015-2-1 L.W. (Cr1) 500 (SC)]**, the Hon'ble Supreme Court of India in paragraph 16 observed that

"Merely for the reason that the witnesses have turned hostile in their cross-examination, the testimony in examination-in-chief cannot be outright discarded provided the same (statement in examination-in-chief supporting prosecution) is corroborated from the other evidence on record."

The other evidence available is arrest and recovery based on confession of A5 spoken by P.W.23 and even in the chief-examination he did not say anything as to the recovery in pursuant to the admitted portion of A5 and he was also treated as a hostile witness. Therefore, this Court is of the view that the petitioner/Appellant/A5 is entitled for suspension of the substantive sentence of imprisonment pending this appeal.

7. In the result, the petition is ordered and the substantive sentence of imprisonment alone in respect of the petitioner/Appellant/A5 is suspended and the petitioner/Appellant/A5 is directed to be enlarged on bail on condition that the petitioner/Appellant/A5 shall execute 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.5, Madurai and on further condition that the petitioner/Appellant/A5 shall stay at Villupuram and report before the Inspector of Police, Villupuram Town Police Station, daily at 11.00 a.m. until further orders.

sd/-

19/06/2019

/ TRUE COPY /



TO

1. THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE,
(FAC), MADURAI.

2. THE JUDICIAL MAGISTRATE NO.V, MADURAI.

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

4. THE SUPERINTENDENT,CENTRAL PRISON, MADURAI.

5. THE INSPECTOR OF POLICE
C-5, KARIMEDU (L&O) POLICE STATION,
MADURAI.

6. THE INSPECTOR OF POLICE,
VILLUPURAM TOWN POLICE STATION.

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

+1. C.C. to M/S.T.THIRUMURUGAN Advocate SR.No.9986

ORDER

IN

CRL MP (MD) No.4689 of 2019

IN

CRL A (MD) No.238 of 2019

Date :19/06/2019

MS/VR/SAR-2/24.06.2019/4P.9C