



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

Thursday, the Eleventh day of July Two Thousand Nineteen

PRESENT

The Hon`ble Mr.Justice M.SATHYANARAYANAN
and
The Hon`ble Mr Justice B.PUGALENDHI

CRL MP(MD) No.4691 of 2019

IN

CRL A(MD) No.103 of 2019

1 IBRAHIMSHA
2 PRAKASH

... PETITIONERS/APPELLANTS/
ACCUSED Nos.1 and 3

Vs

STATE REPRESENTED BY
THE INSPECTOR OF POLICE
VILAKKUTHOON POLICE STATION,
MADURAI DISTRICT
Crime No.56/2014

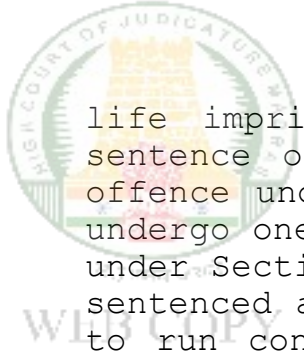
... RESPONDENT/ RESPONDENT/
COMPLAINANT

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 on the petitioners/ Appellants / Accused in S.C.No.147 of 2015 dated 06.02.2019 on the file of the Learned Vth Additional District and Sessions Judge, Madurai and enlarge them on bail pending disposal of the appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.PAUL SUGUMAR Advocate for A1, and Mr.M.MURUGESAN, Advocate for A3, 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**)

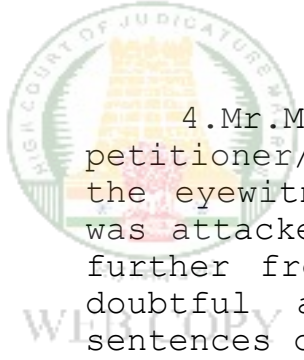
The petitioners/appellants are arrayed as A1 and A3 in S.C.No.147 of 2015 on the file of the Court of V Additional District and Sessions Judge, Madurai and they stood charged for the commission of offences under Sections 302, 506(ii) I.P.C. r/w 34 I.P.C. The trial Court under the impugned judgment dated 06.02.2019 has found them guilty for the commission of offences under Sections 302 r/w 34 I.P.C. and 506(ii) I.P.C. and sentenced A1 to undergo



life imprisonment and to pay a fine of Rs.5,000/- with default sentence of two months simple imprisonment for the commission of offence under Section 302 r/w 34 I.P.C. and also sentenced him to undergo one year rigorous imprisonment for the commission of offence under Section 506(ii) I.P.C. Insofar as A3 is concerned, he was also sentenced as that of A1. The trial Court also ordered the sentences to run concurrently. The petitioners, challenging the legality of the said conviction and sentence, preferred the present appeal and pending appeal, filed the present petition seeking suspension of the substantive sentence of imprisonment. It is represented that A2 died pending trial and therefore, the charges against him has got abated.

2.A perusal of the impugned judgment would disclose that the deceased is the younger brother of the defacto complainant viz., P.W.1 and A1 and A3 are friends and A3 was employed under A2. The deceased along with A1 and other accused murdered one Kalidass in the year 2005 and A1 was convicted in that case and upon appeal, he was released on bail and in that case the deceased Mannarmydehen was acquitted and hence both are inimical. While so, one case was filed against the deceased as he alleged to have attacked the nephew of A1 and in that case the deceased was released on bail and for that also enmity subsisted and on account of the same, on 21.01.2014 at about 11.00 a.m. while the deceased was feeding his goat, which was tied to a pole near Shri Vellai Vinayagar Tea Stall at Munichalai Road, the accused persons, who came there with motive and intention to murder the deceased picked up a wordy quarrel with the deceased and in that brawl A1 stabbed the deceased with knife on the head repeatedly and when A3 caught hold the hands of the deceased tightly, again A1 stabbed him with knife on the backside of his head, right hand palm indiscriminately and when P.W.1 raised alarm, the accused threatened them with dire consequences. The prosecution has rested its case on the evidence of P.Ws.1 to 3 as well as P.W.16, eyewitnesses.

3.Mr.Paul Sugumar, learned counsel appearing for the 1st petitioner/ A1 has drawn the attention of this Court to the testimonies of P.Ws.1 to 13 and 16 as well as the investigating officer viz., P.W.25 and would submit that there are many material discrepancies in the their testimonies and admittedly P.W.11, the then Head Constable of Central Traffic Wing found the deceased lying in the pool of blood and informed the incident to police and that is the first information and Ex.P.1 - complaint cannot be construed as first information. Since the earliest information regarding the occurrence has been suppressed, the entire edifice of the prosecution laid on Ex.P.1 had fallen down and he also drawn the attention of this Court to the testimony of P.W.25 and would submit that since the concerned witnesses have made improvement, the trial Court atleast ought to have awarded the benefit of doubt to the petitioners and since the first petitioner is having a bright chance of success in this appeal, prays for suspension of the substantive sentences of imprisonment.



4.Mr.M.Murugesan, learned counsel appearing for second petitioner/ A3 would submit that even as per the evidence of one of the eyewitnesses the deceased wriggled out of A3 and even then he was attacked and A3 has not been attributed with fatal overacts and further from the evidence of P.W.25 the presence of A3 is highly doubtful and hence, prays for suspension of the substantive sentences of imprisonment.

5.Per contra, Mr.S.Chandrasekar, learned Additional Public Prosecutor appearing for the State would submit that the testimonies of the eyewitnesses coupled with the recovery of M.Os.6 and 7 had clearly disclosed that all the accused were present in the scene of crime and the points urged by the learned counsel appearing for the 1st petitioner/A1 can be appreciated only at the time of final disposal and hence, prays for dismissal of this petition. Further, the learned Additional Public Prosecutor has produced the list of previous cases registered against the 2nd petitioner/A3 and would submit that he is having 7 cases including one more case for the commission of offence under Section 302 I.P.C and in the light of the said antecedents, he may not be granted the benefit of suspension of substantive sentence of imprisonment.

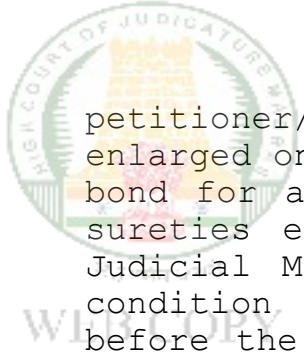
6.This Court has carefully considered the rival submissions and also perused the materials placed before it including the impugned judgment.

7.As per the testimonies of P.Ws.1 to 3 and 16, A1 had been attributed with fatal overt acts and though the learned counsel appearing for the 1st petitioner/A1 made several points including the point that the testimonies of the eyewitnesses cannot be believed, in the considered opinion of this Court, the points urged by him can be appreciated only at the time of final disposal. Therefore, this Court is not inclined to consider the same at this point of time.

8.Insofar as 2nd petitioner/A3 is concerned he is said to have aided the offence and even according to the testimony of one of the eyewitnesses, the deceased wriggled out of the clutches of A3 and thereafter, A1 by M.O.1 attacked the deceased and on account of sustaining of grievous injuries, he breathed his last. The testimony of P.W.25 prima-facie would disclose that there is a doubt as to the presence of A3 in the scene of crime and he has been roped in with aid of Section 34 I.P.C. No doubt, A3 is having antecedents, but it appears that the case under 397 I.P.C. is of the year 2007 and the case under 302 I.P.C. is of the year 2014 and none of the cases much progress has been shown. In the light of the above, this Court is of the view that the 2nd petitioner/A3 is entitled for suspension of the substantive sentence of imprisonment pending this appeal and the 1st petitioner is entitled for the same.

9.In the result, the petition is dismissed in respect of 1st petitioner/A1 and is ordered in respect of the 2nd petitioner/A3 and the substantive sentence of imprisonment alone in respect of the

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petitioner/A3 is suspended and the petitioner/A3 is directed to be enlarged on bail on condition that the petitioner/A3 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.1, Madurai [PRC.No.13/2014] and on further condition that the petitioner/A3 shall stay at Arani and report before the Judicial Magistrate, Arani on all working days at 10.30 a.m. and before the Inspector of Police, Arani Police Station during the holidays at 11.00 a.m. until further orders.

sd/-
11/07/2019

/ TRUE COPY /

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

TO

- 1.THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE, MADURAI.
- 2.THE JUDICIAL MAGISTRATE NO I, MADURAI.
- 3.THE CHIEF JUDICIAL MAGISTRATE, MADURAI DISTRICT.
- 4.THE JUDICIAL MAGISTRATE, ARANI.
- 5.THE CHIEF JUDICIAL MAGISTRATE, THIRUVANNAMALAI DISTRICT.
- 6.THE INSPECTOR OF POLICE
VILAKKUTHOON POLICE STATION, MADURAI DISTRICT.
- 7.THE INSEPCTOR OF POLICE,
ARANI POLICE STATION.
- 8.THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
- 9.THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1. C.C. to Mr.M.MURUGESAN Advocate SR.No.11647

ORDER
IN
CRL MP (MD) No.4691 of 2019
IN
CRL A (MD) No.103 of 2019
Date :11/07/2019

TK/PN/SAR.4/12.07.2019/4P/11C