



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

Friday, the Twentieth day of September Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice S.VAIDYANATHAN
and
The Hon`ble Mr.Justice N.ANAND VENKATESH

CRL MP(MD) No.6345 of 2019
IN
CRL A(MD) No.323 of 2019

RAJARATHINAM

... PETITIONER/PETITIONER

Vs

THE INSPECTOR OF POLICE,
NACHIYARKOVIL POLICE STATION,
KUMBAKONAM, THANJAVUR DISTRICT.
CR.NO.170 OF 2012

... RESPONDENT/RESPONDENT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence in SC No.127 of 2013 on the file of the Additional District and Sessions Judge(FTC), Kumbakonam, dated 28.03.2019.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.A.V.RAJASEKARAN, Advocate for the petitioner and of mr.s.chandrasekar, Additional Public Prosecutor on behalf of the Respondent the court made the following order:-

This petition is filed seeking for suspension of sentence imposed by the Court below in the following manner:

Sl.No.	Offence for which convicted	Imprisonment	Fine
1.	341 IPC	One Month simple imprisonment	-
2.	294 (b) IPC	Three Months rigorous imprisonment	-
3.	302	Life Sentence	Rs.2000/- in default, six months simple imprisonment



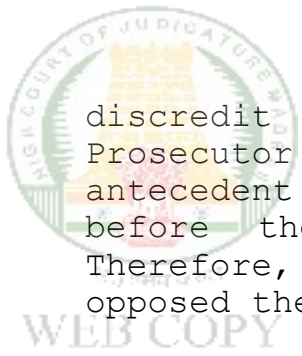
2.The learned Counsel for the petitioner submitted that the case of the prosecution hinges upon the eye witness, PW-1. The learned Counsel submitted that PW-1 could not have seen the incident and he has been planted as an eye witness in this case. In order to substantiate his argument, the learned Counsel invited our attention to the evidence of PW-1, where, PW-1 has categorically stated that he came to the Petrol Bulk for filling petrol for his two wheeler and at that point of time, he saw the deceased along with three others in a two wheeler in the petrol bulk and thereafter, he followed them and near the scene of occurrence, the deceased got down to attend the nature's call and at that time, he was attacked by the accused persons. The incident is set to have taken place at 08.30 pm on 07.07.2012. PW-1 further states that he took the deceased to the hospital and he was declared died in the hospital at 02.30 am on 08.07.2012. In his evidence, he does not tell the names of three persons, who were present along with the deceased.

3.The learned Counsel in order to discredit the evidence of PW-1, invited our attention to the evidence of PW-14. As per the case of the prosecution, the deceased went along with one Ilayaraja and Chellamuthu (PW-14). PW-14, in his evidence, states that he and Ilayaraja saw the deceased in a pool of blood near the petrol bulk and thereafter, both of them had taken the deceased to the hospital. The entry made in the Accident Register, which was marked as Ex-P12, shows that the deceased was brought to the hospital by Ilayaraja, who has not been examined in this case.

4.The learned Counsel for the petitioner further submitted that the complaint was given before the respondent police on 08.07.2012 only at 08.00 am and there is, absolutely, no explanation for the delay in lodging the complaint. The learned Counsel further submitted that if really PW-1 was present in the scene of occurrence and he was the one, who took the deceased to the hospital, he knew about the death of the deceased at 02.45 am on 08.07.2012 and there was no reason why it took PW-1 such a long time to go before the Police to give a complaint.

5.By bringing to the notice of the Court all the above facts, the learned Counsel for the petitioner submitted that the case of the prosecution has to fail, since the evidence of PW-1 is not reliable and it cannot be relied upon by this Court.

6.Per contra, the learned Additional Public Prosecutor appearing on behalf of the respondent submitted that PW-1 has specifically spoken about the overt act, that was committed by both the accused persons. He further submitted that the Accident Register can be taken note of only for the purpose of ascertaining the nature of injuries, that are mentioned in the Accident Register and the name of the person, who had brought the deceased to the hospital. The names of the persons mentioned in the Accident Register, will not in any way



discredit the evidence of PW-1. The learned Additional Public Prosecutor further submitted that the petitioner has criminal antecedent and there are five cases pending against the petitioner before the respondent police, apart from the present case. Therefore, the learned Additional Public Prosecutor vehemently opposed the suspension of sentence for the petitioner.

7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. This Court finds a lot of force in the submissions made by the learned Counsel for the petitioner. There are three factors, which makes out a *prima facie* case in this appeal and they are as follows:

(a) The delay in lodging the complaint for an incident, which took place on 07.07.2012 at 08.30 pm and FIR was registered only on 08.07.2012 at 08.00 am;

(b) The deceased is set to have been accompanied by Ilayaraja and Chellamuthu (PW-14) and Ilayaraja was not examined by the prosecution. Chellamuthu, who was examined by prosecution and was treated as a hostile witness, has specifically stated that he and Ilayaraja saw the deceased lying in a pool of blood near the petrol bulk and thereafter, they both took the deceased to the hospital. Therefore, this version of PW-14 runs contrary to the version given by PW-1; and

(c) The entry made in the accident register (Ex-P12) clearly shows that Ilayaraja had brought the deceased to the hospital.

9. The above cited three reasons make out a *prima facie* case in favour of the petitioner. It is true that there are criminal antecedents against the petitioner. However, it will take some more time to take up the criminal appeal finally and dispose of the same. Therefore, this Court is inclined to suspend the substantive sentence imposed by the Court below, pending disposal of the main appeal, subject to the following conditions:

(a) The petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand) with two sureties each for a like sum, out of which one of the sureties shall be a blood relative, to the satisfaction of the learned Judicial Magistrate, Thiruvudaimaruthur.

(b) The petitioner shall stay at Trichy and he shall report before the Cantonment Police Station, Trichy, daily at 10.30., am and 05.30 pm., until further orders.

(c) The petitioner shall not leave the jurisdiction of Tamil Nadu without the leave of this Court.



10. Accordingly, this miscellaneous petition is allowed.

sd/-
20/09/2019

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/ TRUE COPY /

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

TO

1 THE INSPECTOR OF POLICE
NACHIYARKOVIL POLICE STATION, KUMBAKONAM,
THANJAVUR DISTRICT.

2 THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
FAST TRACK COURT, KUMBAKONAM.

3 THE JUDICIAL MAGISTRATE,
THIRUVIDAIMARUTHUR.

4 DO THROUGH
THE CHIEF JUDICIAL MAGISTRATE,
THANJAVUR AT KUMBAKONAM.

5 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.

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

7 THE INSPECTOR OF POLICE / OFFICER INCHARGE,
the Cantonment Police Station, Trichy.

+1. C.C. to M/S.A.V. RAJASEKARAN Advocate SR.No.16020

ORDER
IN
CRL MP (MD) No. 6345 of 2019
IN
CRL A (MD) No. 323 of 2019
Date : 20/09/2019

TR/PN/SAR-III (20.09.2019) 4P 9C