



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

Thursday, the Eighth day of August Two Thousand Nineteen

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PRESENT

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

CRL MP(MD) No.6632 of 2019
IN
CRL A(MD) No.109 of 2019

RASU @ SUBBAIAH

... APPELLANT/ SOEL ACCUSED

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
DEVATHANAPATTI POLICE STATION,
THENI DISTRICT.
(CRIME NO.299 OF 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 of imprisonment alone in S.C.No.13 of 2015 dated 18.12.2018 on the file of the Learned Additional district Court (Fast track), Theni and enlarge the petitioner/ sole Accused on bail, till the disposal of the 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.S.VINAYAK, 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 the sole accused and vide impugned judgment dated 18.12.2018 in S.C.No.13 of 2015, on the file of the Court of Additional Session Judge (Fast Track Court), Theni, he was convicted and sentenced as follows:



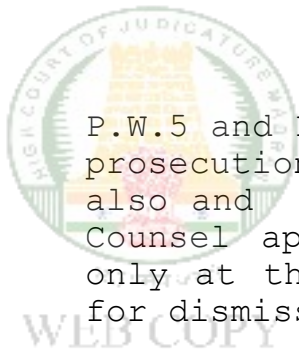
Rank of the Accused	Conviction u/s	Sentence awarded
Sole Accused	201 I.P.C.	To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.2,000/-, in default to undergo simple imprisonment for a period of six months.
	302 I.P.C.	To undergo life imprisonment and to pay a fine of Rs.5000/- in default to undergo simple imprisonment for a period of one year.

Challenging the legality of the said conviction and sentence, the petitioner/appellant has preferred the appeal and pending the appeal, he had filed the present petition seeking suspension of the substantive sentences of imprisonment.

1. The learned Counsel appearing for the petitioner/appellant would submit that the motive for the commission of offence is as to the sharing of water between the deceased and the accused and at about 11.00 p.m., on 18.11.2013, the deceased was done to death by the petitioner/appellant, by repeatedly attacked with his spade. The learned Counsel appearing for the petitioner/appellant has drawn the attention of this Court to the testimony of P.W.3- the sole eye-witness and would submit that though P.W.1-eye-witness, according to the prosecution, did not inform the police for nearly two days and only after two days, the statement was recorded. The learned Counsel, by inviting the attention of this Court to the evidence of P.W.30 - Investigating Officer, would submit that P.W.3 made very many vital improvements from that of his statement recorded under Section 161(3) Cr.P.C., during the course of investigation and would state that he would not have identified at all the occurrence. The learned Counsel would further state that admittedly, the occurrence took place at night hours and there was no street light and even according to the prosecution, it took place in the field and P.W.30 would state that during the course of investigation, he found that there was a moon light and no material whatsoever has been placed to support the testimony of P.W.30 in this regard and hence, prays for suspension of the substantive sentences of imprisonment of the petitioner/appellant.

2.

3. Mr.S.Chandrasekar, learned Additional Public Prosecutor, appearing for the State, would submit that the motive for the commission of offence as coupled through the testimonies of P.W.1 to



P.W.5 and P.W.3-sole eye-witness, has also supported the case of the prosecution and it is also corroborated to the scientific evidence also and would further submit that the points urged by the learned Counsel appearing for the petitioner/appellant can be appreciated only at the time of final disposal of the appeal and hence, prays for dismissal of this petition.

4. This Court has carefully considered the rival submission and perused the materials placed before this Court.

5. According to the prosecution, P.W.3 is the sole eye-witness and on perusal of his testimony would disclose that he has found the wordy altercation between the deceased and the petitioner/appellant and on hearing the same, he went near the deceased and found that the deceased was attacked by the accused by the spade and when he made an attempt to prevent him, he was chased by the petitioner/appellant and since the petitioner/appellant told him that he will also beat to death, he did not disclose the fact to the public and he was examined two days thereafter. Certain contradictions were also found in the testimony of P.W.3. P.W.30 - Investigating Officer would state that the occurrence took place in the field and there was no street light and during the course of investigation, he would state that there was a moon light. As rightly pointed out by the learned Counsel appearing for the petitioner/appellant, no material / evidence has been placed to show that there was a moon light at the time of occurrence. It is the categorical testimony of P.W.3 that since the accused/petitioner/appellant has threatened him to finish him, he did not disclose the fact and it would lead to the material contradiction for the reason that the Investigating Officer, who was examined as P.W.30, in the cross-examination, would state that P.W.3 did not state so, while his statement was recorded under Section 161 (3) Cr.P.C. A perusal of the testimonies of P.W.3 and P.W.30 would *prima facie* disclose that there was certain material contradictions and P.W.3 made material improvements during the course of his evidence.

6. In the light of the above facts and circumstances, this Court is inclined to suspend the substantive sentences of imprisonment pending the appeal.

7. In the result, the petition is ordered and the substantive sentence of imprisonment alone in respect of the petitioner/appellant is suspended and the petitioner/appellant is directed to be enlarged on bail on condition that the petitioner/appellant 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, Periyakulam and on further condition that the petitioner/appellant shall appear before the Committal Court, viz., the Court of Judicial Magistrate,



CRL MP(MD) No.6632 of 2019

Periyakulam [PRC.No.33/2014] on the first working day of every English Calendar Month at 10.30 a.m. until further orders.

sd/-
08/08/2019

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

TO

1. THE ADDITIONAL DISTRICT JUDGE,
(FAST TRACK), THENI.
2. THE JUDICIAL MAGISTRATE, PERIYAKULAM,
THENI DISTRICT.
3. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THENI DISTRICT.
4. THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
5. THE INSPECTOR OF POLICE
DEVATHANAPATTI POLICE STATION, THENI DISTRICT.
6. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S.A.JOEL PAUL ANTONY Advocate SR.No.13256

ORDER
IN
CRL MP(MD) No.6632 of 2019
IN
CRL A(MD) No.109 of 2019
Date :08/08/2019

MS/VR/SAR-1/08.08.2019/4P.8C