



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.7579 of 2019
IN
CRL A(MD) No.61 of 2019

SUDALAIMANI

... PETITIONER/APPELLANT

Vs

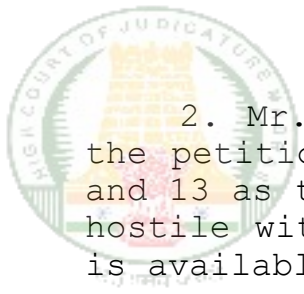
THE INSPECTOR OF POLICE
THOOTHUKUDI SOUTH POLICE STATION,
THOOTHUKUDI, THOOTHUKUDI DISTRICT. ... RESPONDENT/RESPONDENT
(crime No.69/14

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to enlarge the petitioner on bail by Suspending the sentence imposed upon the petitioner in S.C. No. 235 of 2016 on the file of the II Additional District Sessions Judge, Thoothukudi Thoothukudi District.

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

The petitioner has been arrayed as A-1 in S.C.No.235/2016 on the file of the learned Additional District Sessions Judge, Thoothukudi, and by judgment dated 25.01.2019, he has been convicted and sentenced as follows:

Sl.No	Provisions under which convicted	Sentence of imprisonment	Fine amount
1	302 r/w 34 IPC	To undergo imprisonment for life	Rs.1,000/-, in default, to undergo simple imprisonment for six months.
2	120 (b) IPC	To undergo simple imprisonment for six months	-



2. Mr.A.Thiruvadikumar, learned counsel appearing on behalf of the petitioner, submitted that the prosecution had examined P.Ws.12 and 13 as the eye witnesses for the incident. P.W.-13 was treated as hostile witness and therefore, it was only P.W.12's evidence, which is available for the prosecution.

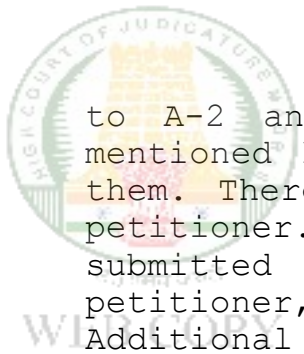
3. The learned counsel submitted that, according to the evidence of P.W.-12, he is known to the deceased and he is also known to the family of the deceased. On 19.01.2014, when he along with P.W.13 were coming back home, they heard the cries of the deceased and therefore, went to the place and with the help of torchlight, he found that the petitioner was attacking the deceased with Aruval (M.O.-6) in his neck along with two other persons. On seeing P.W.-12, all the accused persons are said to have run away from the place. The learned counsel submitted that in the cross-examination, P.W.-12 has specifically admitted that he knows the deceased well and after the incident, he did not inform any of the relatives of the deceased and he did not inform anyone about the incident and he went back home. Only after the police registered an FIR and enquired, he and P.W.-13 told them about the incident.

4. The learned counsel, by pointing out to the evidence of P.W.-12, submitted that P.W.-12 is a chance witness and his evidence is wholly unreliable. The learned counsel further submitted that even in the complaint that was given by P.W.-1, based on which, the FIR was registered on 20.01.2014, at about 12.45 p.m., there is absolutely no reference to anyone, who had witnessed this incident. The learned counsel submitted that the evidence of the Investigating Officer, who was examined as P.W.-16, makes it clear that there was no mention about any eye-witness in the complaint or in the FIR and P.W.-1 had given the complaint, as if he came to know about the incident only after he saw the deceased lying in a pool of blood.

5. The learned counsel, therefore, submitted that the conduct of P.W.-12 is wholly unnatural and it clearly shows that he could not have seen this incident and he has been planted by the respondent police.

6. The learned counsel for the petitioner further brought to the notice of this Court the earlier order passed by this Court granting suspension of sentence to A-2 and A-3.

7. Per contra, the learned Additional Public Prosecutor appearing on behalf of the State submitted that P.W.-12 has specifically spoken about the attack made by the petitioner and about the weapon and also the part at which the deceased was attacked. By reading the evidence of P.W.-12, the learned Additional Public Prosecutor submitted that this evidence of P.W.-12 cannot be discredited, based on minor infirmities that were pointed out by the learned counsel for the petitioner. The learned counsel



to A-2 and A-3 only on the ground that their names were not mentioned by the eye-witness and there were no materials against them. Therefore, that order will not enure to the benefit of the petitioner. The learned Additional Public Prosecutor further submitted that there are three previous cases against the petitioner, apart from the present case. Therefore, the learned Additional Public Prosecutor vehemently opposed the granting of suspension of sentence to the petitioner.

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

9. A careful reading of the evidence of P.W.-12 shows that he is a chance witness in this case. It is admitted by P.W.-12 that he knows the deceased and also his relatives. Therefore, when he had witnessed the incident, which took place between 7.00 a.m. and 9.00 a.m. on 19.01.2014, the natural human conduct would be to inform the same to his relatives or to any known person or would have informed the police about the incident. It is too unnatural for P.W.-12 to have left the scene of occurrence and gone home without informing about this incident to anyone. The first time, P.W.-12 was involved in this case as an eye-witness, was only after the complaint given by P.W.-1. The complaint given by P.W.-1 also does not mention about anybody witnessing the incident. The complaint of P.W.-1 proceeds on the footing that he came to know about the incident after seeing the dead body of the deceased.

10. This Court is prima facie convinced with the submissions made by the learned counsel for the petitioner. Even though there are three previous cases against the petitioner, it will take some more time for this Court to finally dispose of this Criminal Appeal.

11. In the considered view of this Court, the petitioner is entitled for suspension of substantive sentence of imprisonment alone pending disposal of the criminal appeal, subject to the following conditions:

(1) The petitioners shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, out of which, one of the surety shall be the blood relative of the petitioner, each for a like sum to the satisfaction of the learned Judicial Magistrate, No.I, Tuticorin;

(2) The petitioner shall stay at Virudhunagar and report before the Soolakkarai Police Station daily at 10.30 a.m. and 5.30 p.m., until further orders;

(3) The petitioner shall not leave the jurisdiction of Tamil Nadu without seeking leave of this Court; and



(4) The petitioner shall furnish his residential address, change of address and the phone numbers to the respondent police.

WEB COPY

sd/-
20/09/2019

/ TRUE COPY /

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

TO

1 THE II ADDITIONAL DISTRICT AND
SESSIONS JUDGE, THOOTHUKUDI.

2 JUDICIAL MAGISTRATE, NO.I, TUTICORIN.

3. DO THROUGH THE CHIEF JUDICIAL MAGISTRATE, TUTICORIN.

4 THE INSPECTOR OF POLICE
THOOTHUKUDI SOUTH POLICE STATION,
THOOTHUKUDI, THOOTHUKUDI DISTRICT.

5 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.

6. THE INSPECTOR OF POLICE/OFFICER INCHARGE,
THE SOOLAKKARAI POLICE STATION,
VIRUDHUNAGAR.

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

+1. C.C. to M/S. A. THIRUVADI KUMAR Advocate SR.No.16068

ORDER
IN
CRL MP (MD) No.7579 of 2019
IN
CRL A (MD) No.61 of 2019
Date :20/09/2019

TR/PN/SAR-II (25.09.2019) 4P 9C