

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

and

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Crl.M.P.No.3959 of 2020

in

Crl.A.No.847 of 2018

Mahendran, Male, aged 24 years
S/o.Murugesan
No.3/62, Arundhathayar colony
Senai Goundanur, Omalur
Mungilpadi
Salem-636 012.

..Petitioner/ Accused No.1

State represented by
The Inspector of Police
Omalar Police Station
Salem District.
Crime No.642 of 2013.

Vs.

.. Respondent

PRAYER: This Criminal Miscellaneous Petition is filed under Section 389(1) of Cr.P.C. to suspend the sentence imposed on the petitioner through judgment dated 22.11.2018 in S.C.No.64 of 2015 by the learned III Additional District and Sessions Judge, Salem and release the petitioner on bail pending disposal of the above Criminal

Appeal in Crl.A.No.847 of 2018 pending on the file of this Court.

For Petitioner : Mr.S.Jeyakumar

For Respondent : Mrs.M.Prabhavathi
(Additional Public Prosecutor)

ORDER

(Order of the court was made by N.KIRUBAKARAN.J.,)

It is a classic case of the slogans found in the liquor bottles “குடி குடியை கெடுக்கும், குடிப்பழக்கம் உடல் நலத்தைக் கெடுக்கும்.”. It is not only this case, numerous families are being shattered because of liquor, which is generously sold by the Government.

2.The matter is heard through "Video Conferencing".

3.This petition has been filed against the judgment dated 22.11.2018 in S.C.No.64 of 2015 passed by the learned III Additional District and Sessions Judge, Salem, by which two accused were sentenced to life imprisonment. Of the two accused, the second accused was already granted bail and the present petition has been filed by the first accused.

4.The case of the prosecution is that on 01.09.2013, the petitioner/first accused demanded money from the deceased namely, Gunasekaran for consuming liquor, which was refused, resulting in a quarrel between the two persons. In the evening at 5.30 p.m., the petitioner along with second accused went to the house of the victim and developed a quarrel. It is stated that the first accused, at the instigation of the second accused, attacked the deceased with wooden log on his head. The victim sustained grievous injuries on his head and he was taken to the Government Medical College Hospital, Salem and he died on 02.09.2013 at 9.00 a.m. Based on the complaint given by the younger brother of the deceased, a case has been registered in Crime No.642 of 2013 for the offences under Sections 294(b), 341 and 302 IPC. On appreciation of evidence, the trial Court sentenced both the accused for life imprisonment. The said judgment has been questioned in the appeal. The present petition has been filed seeking suspension of sentence pending disposal of the appeal.

5.Mr.S.Jeyakumar, learned counsel appearing for the petitioner would submit that though the alleged occurrence took place at 5.30 p.m. on 01.09.2013, the complaint was lodged only on 02.09.2013 at about 10.30 a.m. by P.W.1/younger brother of the victim.

Though the witnesses who spoke about the incident stated that the incident took place at 5.30 p.m., the Accident Register copy speaks that incident occurred at 3.00 p.m. There is a difference in the timing. The witnesses P.W.1, P.W.2, P.W.12 and P.W.13 spoke about the incident. Because of difference in timing, these witnesses who are supposed to be eye-witnesses could not have witnessed the incident. Moreover, he pointed out that P.W.2 turned hostile. Further, he would point out that though the above witnesses witnessed the incident, only P.W.3/neighbour accompanied the victim to the hospital, whereas P.W.1 who is younger brother, who witnessed the incident did not accompany him, creating suspicion regarding the same. Since there is discrepancy as to the exact time at which the occurrence took place, he would submit that there is arguable point in the appeal.

6.The learned counsel for the petitioner would further submit that the petitioner is suffering from debridement/implant and antibiotic bead exit and therefore, he may be granted bail on medical ground also. Therefore, he prays this Court to suspend the sentence against the petitioner/first accused.

7. On the other hand, Mrs.M.Prabhavathi, learned Additional Public Prosecutor appearing on behalf of the respondent submitted that evidence of eye-witnesses P.W.1, P.W.2, P.W.3 and P.W.13 proved the attack on the victim and because of the attack, the victim died. Therefore, the trial Court, based on the evidence, rightly convicted the petitioner and therefore, he cannot be granted bail.

8. Heard the learned counsel appearing for the petitioner as well as the learned Additional Public Prosecutor appearing for the respondent and perused the materials on record.

9. Admittedly, there is discrepancy as to the time of commission of offence i.e., two hours. According to the witnesses, incident took place at 5.30 p.m. whereas as per Accident Register, it is 3.00 p.m. Moreover, the complaint was given only on the next day, i.e. 02.09.2013 by the younger brother of the deceased, after the death of the victim. Further, as rightly pointed out by the learned counsel for the petitioner that though all the eye-witnesses have seen the occurrence along with the victim, P.W.3/neighbour alone accompanied the victim to the hospital and there is no

explanation as to why the younger brother did not accompany the deceased to the hospital. Further, there is absence of mensrea and there is a possible point for argument that would come under Exception 4 of Section 300 IPC. These are all the points which can be argued at the time of final disposal of the appeal. Therefore arguable points are involved in this case.

10.Moreover, the appeal is of the year 2019 and it is not likely to be taken up immediately or even after sometime also. As per the medical records, the petitioner is suffering from debridement/implant and antibiotic bead exit and that is also a point to be considered by this Court. That apart, the petitioner got married only about 1 ½ years before the incident which took place in the year 2013 and he was hardly aged 24 years at that time. After conviction, the petitioner has been detained in jail for the past two years and because of that, the petitioner's wife is said to have eloped with somebody else.

11.Considering the above facts and submissions, this Court is inclined to order suspension of sentence against the petitioner/first accused. Accordingly, the substantive sentence of imprisonment imposed by the learned III Additional District and Sessions

Judge, Salem, against the petitioner alone is suspended on the following conditions:

(i) The petitioner/first accused is directed to execute his own bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) before the Superintendent of Police, Central Prison, Coimbatore, in view of the prevailing pandemic situation.

(ii) The petitioner/first accused shall appear before the learned III Additional District and Sessions Judge, Salem, on the first working day of every month at about 10.30 a.m. , pending appeal, until further orders.

(N.K.K., J.) (V.M.V., J.)
22.07.2020

Index: Yes/No
Internet: Yes/No

kj

Note: Issue order copy by today (22.07.2020)

WEB COPY

N.KIRUBAKARAN, J.
and
V.M.VELUMANI, J.
kj

To

1.The State represented by the
Inspector of Police
Omalur Police Station
Salem District.

2.III Additional District and Sessions Judge
Salem.

3.The Superintendent of Police
Central Prison, Coimbatore.

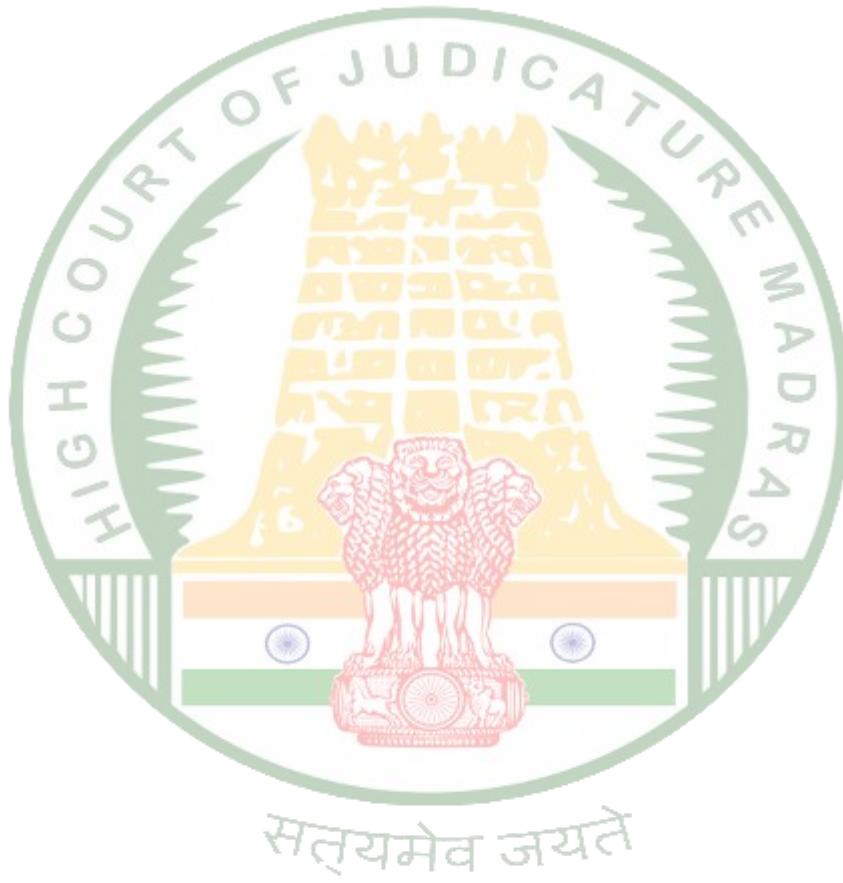
4. The Public Prosecutor,
High Court of Madras, Chennai.

Crl. M.P. No.3959 of 2020
in
Crl.A. No. 847 of 2018



WEB COPY

Dated : 22.07.2020



WEB COPY