

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2020

CORAM:

THE HON'BLE MR.JUSTICE N.KIRUBAKARAN
and
THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.M.P.No.4472 of 2020
in Crl.A.No.169 of 2020

Seenu @ Seenuvasan

.. Petitioner/Appellant
/sole accused

-Vs-

State through its
Inspector of Police
Dusi Police Station
Tiruvannamalai District
(Crime No.436 of 2008)

.. Respondent/Respondent.

Prayer: Criminal Miscellaneous Petition filed under Section 389 (1) of Cr.P.C., read with 439 Cr.P.C., to suspend the sentence of imprisonment imposed by the judgment passed by the learned Additional District and Sessions Judge, Arani, Tiruvannamalai District in Sessions Case No.41 of 2010 dated 05.02.2020 and enlarge the petitioner on bail pending disposal of C.A.

For Petitioner : Mr.B.Ganesh Kumar

For Respondent : Mrs.M.Prabhavathi,
Addl. Public Prosecutor.

O R D E R

(Order of the Court was made by P.VELMURUGAN, J.)

The respondent police registered the case against the petitioner for the offences under Sections 302 and 324 IPC. After the investigation, laid a charge sheet before the Judicial Magistrate, Cheyyar, in PRC.No.3/2009. The learned Magistrate, after completing the procedural formalities, since the offence was exclusively triable by the Sessions Judge, committed the case to the Additional District and Sessions Judge, Arani, Tiruvannamalai. The Additional District and Sessions Judge, Arani, Tiruvannamalai, taken the case on file in S.C.No.41 of 2010. The learned Sessions Judge, after framing the charge, completed the trial and held that the accused/petitioner found

guilty for the offences punishable under Sections 302 and 324 IPC and passed conviction and sentence to undergo imprisonment for life u/s.302 IPC and also to pay a fine of Rs.10,000/- in default to undergo Rigorous Imprisonment for 6 months and the accused is sentenced to undergo imprisonment for 3 years u/s.324 IPC and to pay a fine of Rs.1000/- in default to undergo Rigorous Imprisonment for 3 months. The sentences are ordered to run concurrently. Challenging the judgment of conviction passed by the Sessions Judge, the petitioner has filed the appeal before this court. The petitioner has also filed the present Miscellaneous Petition for suspension of sentence, till the disposal of the appeal.

2. The case of the prosecution is that on 21.09.2008 at about 3.00 p.m, during the death ceremony of one Perumal, the accused tied the DMK flag in the cremation roof. At that time, a dispute arose in the burial ground between the petitioner and the witness Prakash who is the son of the deceased Kuppunaicker. The petitioner bite the hand of witness Prakash and returned from the burial ground. Near the pond, the deceased Kuppunaicker questioned the petitioner about biting of his son. The petitioner immediately ran into his house and brought the hammer and hit the deceased on his left side head and caused head injury to the deceased. When the witness Arun came to the rescue, the petitioner attacked the witness Arun on his forehead and caused injury. Kuppunaicker died due to the head injury sustained, injured Arul was treated in the hospital. Hence the petitioner was charged for the offence under section 302 IPC for murdering the deceased and Section 324 IPC for causing hurt to witness Arul. The petitioner herein arrayed as sole accused in this case.

3. The learned counsel for the petitioner would submit that the deposition of P.W.1 / wife of the deceased and the evidence of injured witness P.W.2 are totally different version of the prosecution case. The complaint itself is very doubtful. Even as per the evidence of P.W.13, the Express FIR Ex.P.7 came to be registered at 10 p.m on 21.09.2008 but the same has reached the Magistrate's court at about 9.45 a.m., on 22.09.2008 almost after 12 hours of the registration of the FIR. There is no plausible explanation offered by P.W.13 for sending the FIR after inordinate delay. Even P.W.3 had categorically admitted that the prosecution agency came to the knowledge about the occurrence by 6 p.m., itself on 29.01.2008, statement of witnesses was recorded by 6.20 p.m. P.W.3 had deposed that his mother P.W.1 was picked from her house by 8.30 p.m., and her thumb impression was obtained for the 2nd time in the complaint. The Inspector of Police had arrested the petitioner at about 1.30 p.m., near a junction on 22.09.2008. On the contrary, P.W.3 in his cross examination has categorically deposed that the accused was available in the Police Station at about 7 a.m., itself on 22.09.2008. Therefore, it is evident that the theory of arrest, confession and recovery becomes doubtful. Even P.W.3 in his cross examination categorically deposed M.O.1 was available in the scene of occurrence even after the occurrence. On the contrary,

the prosecution version was that after the arrest of the appellant, the prosecution had recorded the confession and thereafter, the prosecution has recovered M.O.1 under the cover of mahazar, after the arrest of the appellant by 1.30 p.m., on 22.09.2008 from the bush near the pond. The material contradictions in respect of recovery of M.O.1 is strengthened by the evidence of P.W.8 who had also deposed in respect of the availability of M.O.1 at the scene of occurrence. Further, the accused also sustained injuries and he was given treatment by the prosecution agency for the injuries sustained. However, there was no explanation in the charge sheet for the injuries on the accused. P.W.13 also admitted that he had not placed any materials in respect of the treatment given to the accused along with the charge sheet. The trial court also failed to consider these aspects.

4. In order to substantiate his contentions, the learned counsel placed reliance on the judgment of the Honourable Supreme Court in the case of **Lakshmi Singh and others Vs. State of Bihar** reported in **(1976) 4 Supreme court Cases 394**. He submitted that in this case also, the prosecution has not explained as to how the petitioner sustained injury and has not given proper explanation as to how the petitioner sustained injury. There are material contradictions between the prosecution witnesses. The petitioner has filed the criminal appeal against the judgment and he is advised to submit that he has got the fair chance of succeeding in the appeal and prays for suspending the sentence.

5. The learned Additional Public Prosecutor would submit that during the death ceremony of one Perumal, the petitioner tied the DMK flag in the cremation roof. Due to that, there was a quarrel between the petitioner and the son of the deceased. The petitioner bite the son of the deceased. Therefore, the deceased questioned about the same. Immediately, the petitioner went to their house and brought the hammer and hit the deceased on his left side head and caused head injuries to the deceased. Due to that, the deceased sustained injuries and subsequently he died. There is a specific overt-act against the petitioner. The eye witness as well as injured witness P.W.2 also clearly spoken about the occurrence and the medical evidence also corroborate the same. The trial court has appreciated the entire prosecution evidence and recorded the conviction. The learned Additional Public Prosecutor submits that she is ready for the appeal itself and therefore, this miscellaneous petition has to be dismissed.

6. Heard and perused the records.

7. The petitioner has been arrayed as sole accused in this case. There is specific overt-act against the petitioner. All the points raised by the learned counsel for the petitioner are touching the merits of the appeal and that can be decided only after hearing the appeal and not at this stage. Since there is specific overt-act against the petitioner and this court is inclined to take up the appeal immediately after receipt of the records from the trial court and after preparing typed set by the Registry, we are not inclined to allow the suspension of sentence.

8. In view of the above and considering the serious nature of the offence, this Court is not inclined to suspend the sentence imposed on the petitioner/Appellant. Hence, this Criminal Miscellaneous Petition is dismissed.

-sd/-
01/10/2020

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
ARANI, TIRUVANNAMALAI DISTRICT.

2 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
DUSI POLICE STATION,
TIRUVANNAMALAI DISTRICT .

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C.C. to M/S. R.GANESH KUMAR Advocate on payment of necessary charges

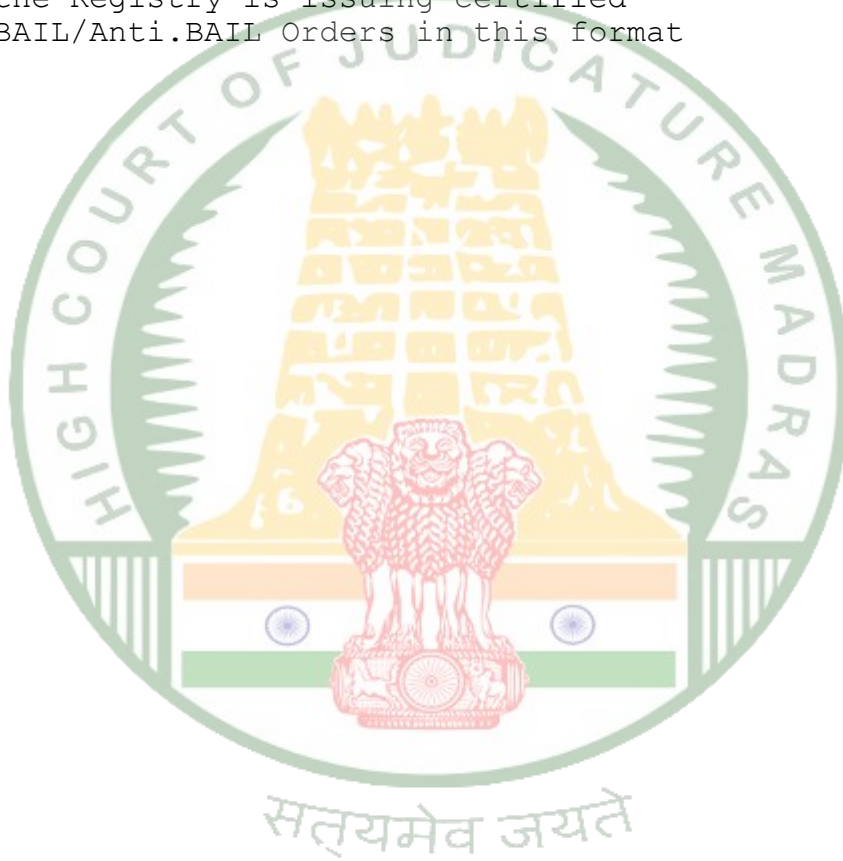
Order

in
CRL.MP.NO.4472/2020
in
CRL.A.NO.169/2020

Date :01/10/2020

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MK:05/10/2020



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