

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2020

CORAM:

THE HON'BLE MR.JUSTICE N.KIRUBAKARAN

and

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.M.P.No.5085 of 2020

in Crl.A.No.235 of 2020

K.Madheshwaran .. Petitioner/1<sup>st</sup> Appellant  
/A-1

-Vs-

State by ..Respondent/Respondent.  
The Inspector of Police  
Sooramangalam Police Station  
Salem District  
Crime No.684 of 2013.

**Prayer:** Criminal Miscellaneous Petition filed under Section 389(1) and (2) of Cr.P.C., to suspend the sentence of imprisonment imposed in the judgment dated 26.02.2020 in S.C.No.113 of 2016 on the file of the learned II Additional District and Sessions Judge, Salem and enlarge the petitioner on bail pending disposal of the above criminal appeal No.235 of 2020.

For Petitioner : Mr.A.Thiagarajan

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

**ORDER**

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

The petitioner has been arrayed as A-1 in S.C.No.113 of 2016 on the file of II Additional District and Sessions Judge, Salem, for the offence punishable under Sections 302 and 302 read with Section 34 IPC. The trial court by its Judgment dated 26.02.2020 convicted the petitioner for the offence punishable under Section 302 IPC and sentenced to undergo life imprisonment and to pay fine of Rs.2000/- in default to undergo one year simple imprisonment.

2. The case of the prosecution is that the petitioner was the tenant of the deceased. After vacating the premises in which he was a tenant he asked for the return of the advance amount, which was

not given to him by the deceased. A complaint was also given by the petitioner in this regard. However, despite the same, the deceased did not give back the money.

3. The petitioner along with other five accused went to the place of the deceased and committed the offence. The petitioner attacked the deceased with the axe on the back side of the head. The trial court convicted the petitioner and two other accused acquitting A-4 to A-6. However, the petitioner has been acquitted for the offence under Sections 148 and 307 IPC, while rendering conviction for the offence under Section 302 IPC.

4. The learned counsel for the petitioner would submit that there is a material contradiction between the evidence of P.Ws.1, 2 and 3 among themselves. P.W.1 is the son of the deceased and he is interested witness. The evidence of P.W.1 was not corroborated by other witnesses. Doctor's report also does not show that there is injury on the back side head of the deceased. He is a coolie. He is vending the tea he is very poor and innocent and he has not committed any offence. There is no specific overtact against the petitioner. Since because the deceased did not return back the advance amount paid by him even after vacating the premises and also given the complaint to the police in this regard, therefore, the prosecution has not proved the case beyond reasonable doubt and trial judge failed to properly appreciate the cross examination of the prosecution witnesses and convicted the petitioner. However, he has got valid points in arguing the appeal and therefore, the petitioner may be granted suspension of sentence till deciding the appeal. He also submitted that A-2 and A-3 were granted suspension of sentence by this court vide order dated 29.06.2020 in Crl.M.P.No.4013 of 2020 in Crl.A.No.235 of 2020. Further, the learned counsel submits that the petitioner is in custody for more than six months and prayed to suspend the sentence.

5. The learned Additional Public Prosecutor appearing for the State would submit that P.W.1 is the son of the deceased who is an eye witness in this case. When the petitioner and other accused came to the occurrence place, shouted the deceased, the deceased has come out of the house. P.W.1, son of the deceased has seen the petitioner attacking the deceased with axe. P.W.1 have witnessed the same and P.W.2, P.W.3 are also eyewitnesses and they have corroborated the evidence of P.W.1 and there is specific overtact against the petitioner.

6. Heard and perused the records.

7. We do find from the evidence available from the records that there is specific overtact attributed against the petitioner. He attacked the deceased on the head and also the witness P.W.1 and his grand father. The death was due to injury caused by A-1/petitioner. The doctor who conducted the autopsy also given the opinion that death is due to head injury. Though the learned counsel for the petitioner would submit that there is no specific overtact against the petitioner and the evidence of P.W.1 in this case is son of the

deceased who is interested witness, and no witness corroborated the evidence of P.W.1, on a reading of the entire materials, this court finds that there is specific overtact against the petitioner and the eyewitnesses also spoke about that and autopsy report also speaks about head injury. The petitioner is prime accused and he went along other accused to the deceased house with weapons. Whatever the points raised by the learned counsel for the petitioner would be decided at the time of final hearing of appeal and not at this stage.

8. Even this court is inclined to take up the appeal immediately after receiving the records from the trial court and preparing typed set of papers by the Registry.

9. In view of the same, this Court is not inclined to suspend the sentence imposed on the petitioner/Appellant. Hence, this Criminal Miscellaneous Petition is dismissed.

-sd/-  
24/09/2020

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 II ADDITIONAL DISTRICT AND SESSIONS  
JUDGE, SALEM.

2 THE JUDICIAL MAGISTRATE,  
NO.II, SALEM.

3 THE CHIEF JUDICIAL MAGISTRATE  
SALEM. [FOR INFORMATION]

4 THE INSPECTOR OF POLICE,  
SOORAMANGALAM POLICE STATION,  
SALEM DISTRICT.

5 THE PUBLIC PROSECUTOR  
HIGH COURT, MADRAS.

6 THE SUPERINTENDENT,  
CENTRAL PRISON, COIMBATORE.

Copy to:

THE SUB ASSISTANT REGISTRAR  
CRIMINAL SECTION,  
HIGH COURT, CHENNAI-104.

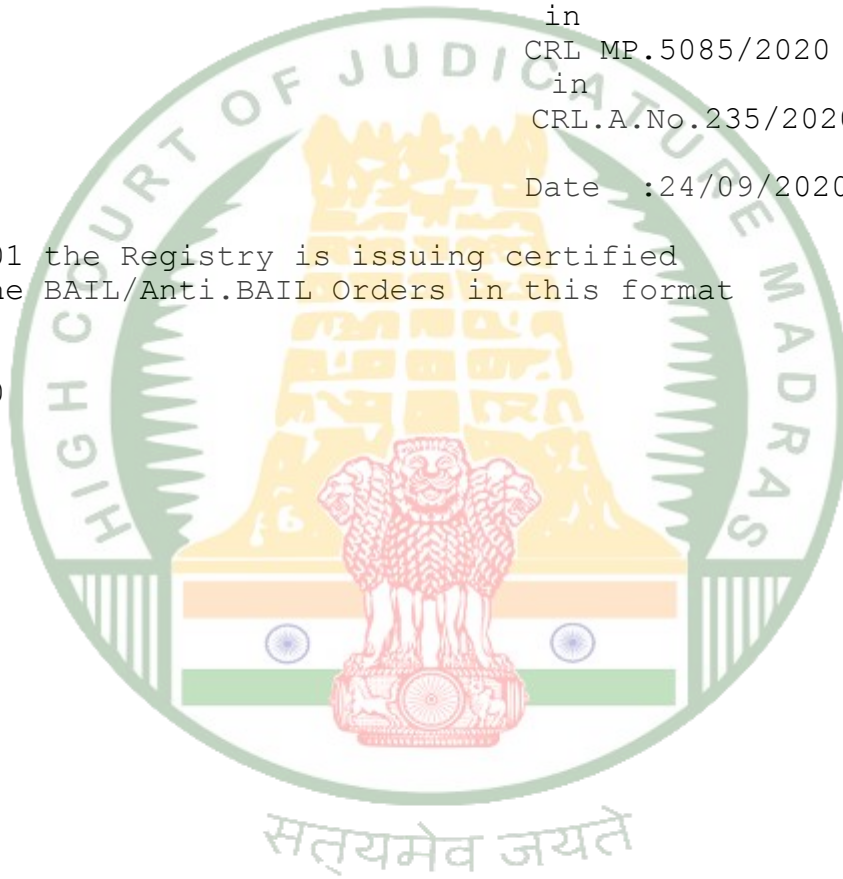
+1 C.C. to M/S. A.THIYAGARAJAN Advocate on payment of  
necessary charges SR.NO.6423

Order

in  
CRL MP.5085/2020  
in  
CRL.A.No.235/2020  
Date :24/09/2020

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TA-09/10/2020



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