



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

Monday, the Twenty Fourth day of February Two Thousand Twenty

PRESENT

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The Hon`ble Mr.Justice T.RAJA
and
The Hon`ble Mr Justice B.PUGALENDHI

CRL MP(MD) No.485 of 2020
IN
CRL A(MD) No.38 of 2020

1.G.MURUGESAN
2.M.MAHALAKSHMI

... APPELLANTS/ACCUSED
Nos.1 and 2

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
THIRUTHANGAL POLICE STATION,
VIRUDHUNAGAR DISTRICT.
CRIME NO.623 OF 2012

... RESPONDENT/COMPLAINANT

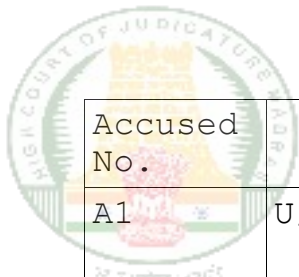
Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence and grant Bail to the Appellants /Accused Nos 1 and 2 against the conviction Judgment dated 26.11.2019 made in S.C.No.136 of 2013 passed by the Additional District Sessions Court Srivilliputhur, Virudhunagar District in Cr.No.632 of 2012 on the file of the Respondent pending disposal of the instant Criminal Appeal on such terms and conditions as may be deem fit and thus render justice.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.I.PINAYGASH, Advocate for the Appellants and of Mr.R.ANANDARAJ, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

[Order of the Court was made by T.RAJA, J.]

The petitioners herein are A1 and A2 in S.C.No.136 of 2013. A1 is brother-in-law of the deceased and A2 is the wife of the deceased.P.W.1, who is the brother of the deceased, lodged a complaint. The trial Court, by Judgment dated 26.11.2019, found the accused guilty and convicted and sentenced them for the following offences:

<https://hcservices.ecourts.gov.in/hcservices/>



Accused No.	Offence	Punishment
A1	U/s.449 IPC	To undergo five years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo two months rigorous imprisonment
	U/s.302 IPC	To undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo six months rigorous imprisonment.
A2	U/s. 302 IPC	To undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo six months rigorous imprisonment.

Challenging the conviction and sentence, the accused have filed the appeal along with the petition for suspension of sentence imposed against them.

2. Learned counsel appearing for the petitioners/accused submitted that P.W.1, brother of the deceased lodged a complaint before the respondent police with the allegation that after a wordy quarrel, A1 and A2 have caused the death of the deceased and the prosecution has also laid a case, taking support from P.W.1's evidence that on the fateful day, P.W.1 having witnessed the wordy quarrel with the deceased by A2 and A1, left the home and thereafter, it was found that the deceased was found dead in their house, whereas, two independent witnesses, namely, P.W.4 and P.W.12, who are the neighbours of the deceased, turned hostile.

3. The learned counsel for the petitioners/accused further submitted that the extra judicial confession has also been made before the Village Administrative Officer, but, the said VAO was not examined. Moreover, in the presence of VAO, the knife, said to have been used for causing the death of the deceased, was recovered in the open place. Therefore, the case of the prosecution is highly improbable. Further, the last seen theory given by P.W.1 has not been corroborated with any one of the two independent witnesses, namely, P.W.4 and P.W.12 in as much as both of them turned hostile. Therefore, it is not a case for conviction.

4. Opposing the above prayer, the learned Additional Public Prosecutor appearing for the respondent submitted that the question of corroboration of P.W.1's evidence with the evidence of P.W.4 and P.W.12, who turned hostile, is totally unnecessary in the present case, for the reason that P.W.1 has clearly narrated the occurrence, after witnessing both A1 and A2 had a quarrel with the deceased on the fateful day and the evidence of P.W.1 has not been impeached by the accused at any point of time. Therefore, the trial Court,



based on the evidence of P.W.1 and also taking support from the confession given by A1, has rightly convicted and sentenced them.

5. Replying to yet another arguments made by the learned counsel appearing for the petitioners/accused, the learned Additional Public Prosecutor submitted that the recovery of knife from the open place pursuant to the extra judicial confession made to the Village Assistant Officer cannot be turned as extra judicial confession, but, it is only a arrest confession. Further, the learned Additional Public Prosecutor has also pleaded that the knife was not recovered from the open place, but, it was recovered beneath the rock. Therefore, the findings and conclusion reached by the trial Court cannot be found fault with.

6. Heard the learned counsel appearing for the accused and the learned Additional Public Prosecutor.

7. Considering the fact that P.W.2 and P.W.4, who are the neighbours, after implicating A1 and A2, turned hostile and the other circumstances relied were not sufficiently proved, we are inclined to suspend the substantive sentence of imprisonment alone pending appeal.

8. Accordingly, this petition is ordered. The substantive sentence of imprisonment imposed against the petitioners/accused Nos.1 and 2 is suspended on condition that each of the petitioners 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, Sivakasi;

(a) Each of the petitioners shall report before the learned Judicial Magistrate No.II, Sivakasi, at 10.30 a.m., on the first working day of every month pending disposal of the appeal;

(b) The petitioners shall not leave the jurisdiction of Tamil Nadu without seeking leave of this Court till the disposal of the Appeal; and

(c) The petitioners shall furnish their residential address, change of address, if any and the phone numbers to the respondent Police.

sd/-
24/02/2020

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/ /2020
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO

1. THE ADDITIONAL DISTRICT SESSIONS COURT,
SRIVILLIPUTHUR, VIRUDHUNAGAR DISTRICT.

2. THE JUDICIAL MAGISTRATE,
SIVAKASI.

3. THE JUDICIAL MAGISTRATE NO II,
SIVAKASI.

4. THE CHIEF JUDICIAL MAGISTRATE,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.

5. THE INSPECTOR OF POLICE
THIRUTHANGAL POLICE STATION,
VIRUDHUNAGAR DISTRICT.

6. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

7. THE SUPERINTENDENT,
WOMEN CENTRAL PRISON, MADURAI.

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

+1. C.C. to M/S.I.PINAYGASH Advocate SR.No.3830

ORDER
IN
CRL MP (MD) No.485 of 2020
IN
CRL A (MD) No.38 of 2020
Date :24/02/2020

OGY
TK/PN/SAR.1/25.02.2020/4P/10C