



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

Monday, the Twenty Fourth day of February Two Thousand Twenty

PRESENT

The Hon`ble Mr.Justice T.RAJA
and

The Hon`ble Mr Justice B.PUGALENDHI

CRL MP(MD) No.1513 of 2020

IN

CRL A(MD) No.397 of 2019

SUBBURAM

... PETITIONER/ APPELLANT/
ACCUSED

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
VEMBAKOTTAI POLICE STATION,
VIRUDHUNGAR DISTRICT.
CRIME NO.138 OF 2014.

... RESPONDENT/ 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 execution of sentence by granting bail in S.C.No.22/2016 dated 15/07/2019 on the file of the Additional District and Sessions Judge, Srivilliputhur, Virudhunagar, Virudhunagar District till the disposal of the Crl.A. and to render justice.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.V.KATHIRVEL, Senior Counsel for M/S.K.PRABHU, Advocate for the petitioner and of Mr.R.ANANDHARAJ, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

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

This Criminal Appeal has been filed by the petitioner/accused, who was found guilty by the trial Court in S.C.No.22 of 2016, for the offence under Section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo three months simple imprisonment. Challenging the said conviction and sentence, the accused has preferred this criminal appeal along with the above miscellaneous petition for suspension of sentence.

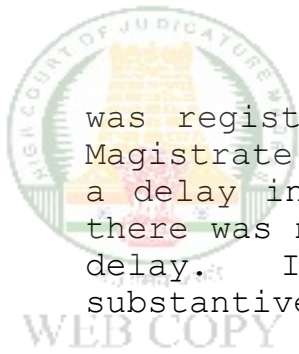


2. Mr.Kathirvel, Senior Counsel, appearing for Mr.K.Prabhu learned counsel for the petitioner submitted that there was only one eye witness, namely, P.W.1, who is the son of the first wife of the deceased. P.W.1, being interested witness, has stated before the Doctor that two known persons caused the death of his father, but, he has stated in the complaint that one known person caused to the death of his father. Therefore, when P.W.1, son of the first wife, is said to have seen the occurrence with his own eyes, he ought not to have shifted his version before the Doctor and the Police Station, which clearly indicates the presence of P.W.1 is highly doubtful. But, the trial Court, based on the evidence of P.W.1, has wrongly convicted the accused.

3. The learned Senior Counsel further submitted that the occurrence took place at 9.30 p.m. and the FIR was registered at 1.30 a.m., but, the same was reached to the Judicial Magistrate at 8.00 a.m. Therefore, there was a delay in sending the FIR to the Judicial Magistrate, for which, there was no explanation on the side of the prosecution, which also shows that the entire prosecution has been cooked-up. Further, it is stated that when the prosecution has relied upon the evidence of P.W.1, which is not even consistent and the evidence of P.W.1 is fully of contradiction, it is not safe to convict the accused/appellant, who is the brother of the second wife.

4. Opposing the above prayer, the learned Additional Public Prosecutor submitted that the argument advanced by the learned Senior Counsel appearing for the appellant/accused that there was only one eye witness, namely, P.W.1 and his evidence was wrongly relied upon by the trial Court is incorrect, the reason being there were three eye-witnesses, one is P.W.1, the son of the first wife, second eye-witness was another son of the deceased, but unfortunately, he died before the trial, however, he has narrated the entire occurrence in the statement recorded under 161 Cr.P.C., and third eye-witness is P.W.3, but, he turned hostile. Therefore, the trial Court was to believe the case of the prosecution based on the evidence given by P.W.1, who witnessed the occurrence. Therefore, P.W.1 has to be construed as a chance witness. Further, P.W.1 who is the son of the first wife as having witnessed the incident has rightly spoken about the full involvement of the accused.

5. But, we are unable to support the case of the prosecution for the reason that when P.W.1, who claims to be an eye witness, has taken the deceased to the hospital, he has explained before P.W.7 Doctor that his father was fatally assaulted by two known persons and the Doctor also while standing in the witness box has reiterated the same, whereas, P.W.1, before the Police Station, has mentioned only one known person said to have caused the death of his father. Secondly, the occurrence took place on 14.04.2014 at 9.30 p.m. and before the Doctor at 10.30 p.m. thereafter the FIR



was registered at 1.30 a.m. but the same reached to the Judicial Magistrate on the next day at 8.00 a.m., which shows that there was a delay in reaching the FIR to the Judicial Magistrate. However, there was no explanation on the side of the prosecution for the said delay. In view of the above, 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 petitioner/accused is suspended on condition that the petitioner 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 No.II, Saathur;

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

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

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

sd/-

24/02/2020

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

TO

1. THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
SRIVILLIPUTHUR, VIRUDHUNAGAR, VIRUDHUNAGAR DISTRICT.
2. THE JUDICIAL MAGISTRATE NO.2, SAATHUR.
3. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
VIRUDHUNAGAR DISTRICT AT SRIVILIPUTTUR.
4. THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
5. THE INSPECTOR OF POLICE
VEMBAKOTTAI POLICE STATION, VIRUDHUNGAR DISTRICT.
6. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.K.PRABHU, Advocate (SR-3829[I] dated 24/02/2020)

ORDE IN

CRL MP(MD) No.1513 of 2020
IN CRL A(MD) No.397 of 2019
Date :24/02/2020