



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

Wednesday, the Twenty Third day of December Two Thousand and Twenty

PRESENT

The Hon`ble Mr.Justice K.KALYANASUNDARAM
and
The Hon`ble Mrs.Justice T.KRISHNAVALLI

CRL MP(MD) Nos.1336 and 6834 of 2020
IN

CRL A(MD) No.74 of 2020

SELVI

...APPELLANT 2/ACCUSED 2
IN CRL MP(MD)No.1336 of 2020
IN CRL A(MD) No.74 of 2020

MURUGESAN

...APPELLANT 1/ACCUSED 1
IN CRL MP(MD)No.6834 of 2020
IN CRL A(MD) No.74 of 2020

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE,
EAST POLICE STATION,
KOVILPATTY. THOOTHUKUDI DISTRICT.
CRIME NO.75/2017

... RESPONDENT/COMPLAINANT
IN BOTH PETITIONS

COMMON PRAYER IN CRL MP(MD)Nos.1336 and 6834 of 2020 IN CRL A(MD) No.74 of 2020:

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence imposed by the learned II Additional District and Sessions Judge, Thoothukudi in S.C.No.254 of 2017, dated 27.11.2019 and release the petitioner on bail pending disposal of the above Criminal Appeal.

PRAYER IN CRL A(MD)No.74 of 2020:

Pleased to call for the entire records connected with the proceedings of the Judgment of conviction passed by the Learned II Additional District and Sessions Judge, Thoothukudi in S.C.No.254 of 2017 dated 27.11.2019 and set aside the same and acquit the appellants from all the Charges and thus render justice.

Order : These petitions coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.G.BHAGAVATH SINGH, Advocate for the Appellant in



both the petitions and of Mr.R.ANANDARAJ, Additional Public Prosecutor on behalf of the Respondent in both the petitions, the court made the following order:-

[Order of the Court was made by K.KALYANASUNDARAM, J.]

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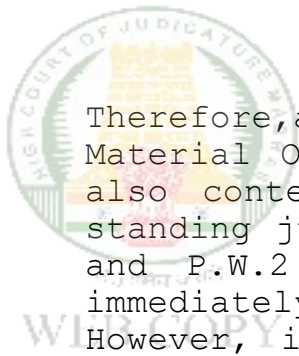
The Petitioners are the accused/A1 and A2 in S.C.No.254 of 2017, on the file of the Second Additional District and Sessions Court, Thoothukudi. Both were tried for the charges punishable under Sections 120(b), 449 and 302 IPC. The trial Court found them guilty and imposed sentence including life imprisonment. Challenging the conviction, the present appeal has been filed.

2.The case of the prosecution is that the deceased Shanmugam is the father of P.W.1 Srinivasan. The deceased attacked the first accused about two months prior to the occurrence suspecting that A1 was having illicit intimacy with P.W.1's mother Valliammal, in which, A1 sustained injury. The deceased was arrested in that case and remanded to judicial custody. After he came out on bail, it is the prosecution case that both the accused have stated that they would not leave the deceased. Whiles, on 23.1.2017 at 11.30 p.m., when P.W.1 and P.W.2 were standing in front of Kaliyamman Temple, both the accused with a cane were proceeding to the house of the deceased and a little later, heard the screaming of the deceased. When both P.W.1 and P.W.2 came there to see the accused were running away from the house of the deceased with a cane. Then they found the deceased with fire and they attempted to extinguish the fire. But in the meantime, he died. P.W.1 immediately went to the Police Station and lodged a complaint.

3.There is no direct witness to the accident that took place on 23.1.2017. The prosecution relies upon the circumstantial evidence to prove the charges against the accused..The prosecution examined as many as 20 witnesses and produced Ex.P1 to Ex.P24 and MOs.1 to 9 were produced. On appreciation of evidence, the trial Court held that the prosecution has proved the charges beyond reasonable doubt and convicted the accused as stated above. Aggrieved over the conviction and sentence, the present appeal has been filed. Pending appeal, A1 and A2 seek suspension of sentence.

4.Mr.G.Bhagavath Singh, learned counsel appearing for the Petitioners would argue that both the petitioners are son and mother. According to the learned counsel, both of them have been falsely implicated in this case in view of the earlier motive. It is the submission of the learned counsel for the Petitioners that the genesis of the case has been suppressed by the prosecution. He would further add that the occurrence is said to have taken place on 23.1.2017 at 11.30 p.m.and the complaint was preferred by P.W.1 at 12.30 p.m on the same day. In the cross examination, P.W.1 has categorically admitted that when he lodged the complaint with the Police, he found A2 in the Police Station.

<https://hcservices.ecourt.gov.in/hcse/Pics/>



Therefore, arrest of A2 on 24.11.2017 at 11.00 p.m and recovery of Material Object in pursuance of his confession are false. It is also contended that P.W.1 and P.W.2 have stated that they were standing just 50 ft away from the place of occurrence when P.W.1 and P.W.2 were proceeding to the house of the deceased and immediately tried to extinguish the fire by pouring water on him. However, in the Observation Mahazar prepared by the Investigating Officer within two hours from the time of occurrence, the presence of the water and kerosene in the scene of occurrence have not been mentioned, which shows that P.W.1 and P.W.2 would not have been present at the scene of occurrence and the medical evidence is not supporting the prosecution case. It is also stated that the second accused is a senior citizen, aged about 70 years and she has been languishing in jail for more than one year.

5.Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor appearing for the respondent vehemently opposed the bail petition, contending that both the accused have a strong motive against the deceased for the reason that the deceased attacked A1 about two months prior to the date of occurrence. It is the submission of the learned Additional Public Prosecutor that though there is no direct evidence to the occurrence, but the circumstances appearing against the accused, have been categorically proved by the prosecution and hence the accused are not entitled for suspension of sentence and prays for dismissal of these petitions.

6.When the matter is taken up for hearing today, the learned counsel for the Petitioners seeks permission of this Court to withdraw the bail petition as against **A1 in Cr1.M.P(MD)No.6834 of 2020 in Cr1.A(MD)No.74 of 2020** and accordingly, the said application stands **dismissed as withdrawn**.

7.In the matter on hand, it is the case of the prosecution that the deceased Shanmugam, father of P.W.1, on suspicion that the first accused developed illicit intimacy with his wife Valliammal, said to have attacked A1. It is not disputed that in the earlier incident, the deceased was remanded to judicial custody and after he came out on bail, the accused are said to have caused his death by pouring kerosene and set fire on him.

8.As rightly pointed out by the learned counsel for the Petitioners, the prosecution case is that A2 was arrested on 24.11.2017, but P.W.1 in his cross examination, has admitted that he saw the second accused in the Police station at 12.30 p.m. On 23.11.2017. Therefore, there is a serious doubt over the arrest of the accused. Furthermore, if P.W.1 and P.W.2 are standing just 50 ft away from the scene of occurrence, they would have immediately taken steps to extinguish the fire, but the Post-mortem Certificate shows that the deceased sustained 100% burn injuries.



9. Considering the above aspects, we are of the opinion that the accused/A2 only is entitled for suspension of sentence during pendency of the appeal. Accordingly, the criminal miscellaneous petition in Crl.M.P(MD)No.1336 of 2020 in Crl.A(MD)No.74 of 2020 is allowed and the substantive sentence of imprisonment imposed on the petitioner/A2 alone is suspended, subject to the following conditions:

i. The Petitioner/A2 is directed to be enlarged on bail on executing a bond for Rs.10,000/- (Rupees ten thousand only) with two sureties, of whom, one should be a blood-related surety, each for a like sum to the satisfaction of the Judicial Magistrate No.I, Thoothukudi.

ii. The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Trial Court may obtain a copy of their Aadhar card or Bank pass book to ensure their identity.

iii. The petitioner/A2 shall appear before the learned Judicial Magistrate No.I, Thoothukudi, at 10.30 a.m. on the first working day of every English Calendar month until further orders.

iv. On any particular date, if the petitioner/A2 is not able to appear, leave is granted to the petitioner/A2 to file an application under Section 317 Cr.P.C. and appear before the Trial Court on any other day, as determined by the Trial Court, in lieu of the day on which they would absent.

sd/-
23/12/2020

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/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

TO

1. THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE,
THOOTHUKUDI.

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



2.THE JUDICIAL MAGISTRATE NO I,
THOOTHUKUDI.

3.DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THOOTHUKUDI DISTRICT.

4.THE INSPECTOR OF POLICE,
EAST POLICE STATION,
KOVILPATY. THOOTHUKUDI DISTRICT.

5.THE SUPERINTENDENT,
CENTRAL PRISON FOR WOMEN,MADURAI.

6.THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.

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

+1. C.C. to M/S.G.BHAGAVATH SINGH Advocate SR.No.8496

ORDER IN
CRL MP(MD) Nos.1336 and 6834
of 2020 IN
CRL A(MD) No.74 of 2020
Date :23/12/2020

VSN
TK/VR/SAR.4/07.01.2021/5P/9C