



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

Thursday, the Fifteenth day of October Two Thousand Twenty

PRESENT

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

CRL MP(MD) No.1616 of 2020
IN
CRL A(MD) No.62 of 2020

JEYARAMAN

... APPELLANT/ACCUSED NO.1

Vs

STATE THROUGH
THE INSPECTOR OF POLICE,
DEVAKOTTAI POLICE STATION,
SIVAGANGAI DISTRICT.
(IN CRIME NO.533/2010)

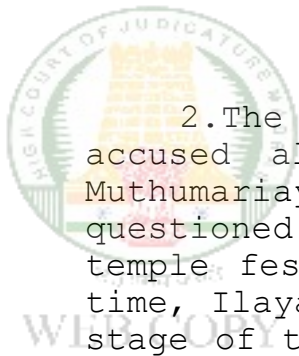
... RESPONDENT/COMPLAINANT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence imposed against me in S.C.No.16 of 2011 on the file of the Hon'ble Principal Sessions Judge, Sivagangai dated 17.09.2019 and release appellant on bail till the disposal of the appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.R.GANDHI for Mr.R.ALAGUMANI, Advocate for the petitioner and of Mr.K.K.RAMAKRISHNAN, Additional Public Prosecutor, on behalf of the Respondent, the court made the following order:-

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

Though the charge sheet has been laid against three accused, it is seen that the third accused Govindaraj died pending trial and the second accused was acquitted by the trial Court for the charges framed under Section 341 and 302 r/w 34 IPC. The petitioner, who was arrayed as A1 in S.C.No.16 of 2011, was tried for the offences under Sections 341, 302 and 506(2) IPC and being found guilty for the offence under Section 302 IPC, he was convicted and sentenced to undergo life imprisonment and fine of Rs.10,000/- which carries default sentence and he was acquitted for the offence under Sections 341 and 506(2) IPC. Challenging the conviction and sentence, the present appeal has been filed.

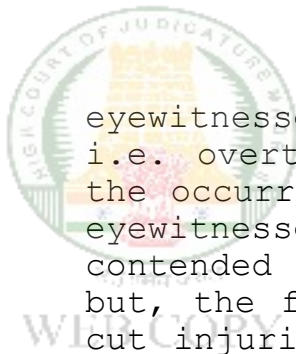


2.The case of the prosecution is that on 09.08.2018, the first accused along with other accused had gone to Vinai Theerkkum Muthumariayamman Temple situated at Devakottai Town, where he questioned the persons for non-inclusion of the first accused in the temple festival committee. According to the prosecution, at that time, Ilayaraja, Mathi, Senthamarai and Mani were present near drama stage of the temple and the deceased Karthick interfered to pacify the accused. At that time, the second accused caught-hold of the deceased and at the instigation of the third accused, the first accused inflicted cut injuries on the deceased. It is the further case of the prosecution that the deceased was immediately taken to the Government Hospital, Devakottai, where he was declared as dead.

3. The prosecution in order to prove their case, examined P.W.2, P.W.3 and P.W.6 as eyewitnesses and also relied upon other materials to substantiate the charges. The trial Court, accepting the evidence of prosecution, convicted the first accused and imposed the sentence as stated supra and hence, this appeal.

4.Mr.R.Gandhi, learned counsel appearing on behalf of Mr.R.Alagumani would argue that there is a delay in lodging the complaint to the respondent police and further, all the eyewitnesses, viz., P.W.2, P.W.3 and P.W.6 are close relatives of the deceased. It is the contention of the learned counsel for the petitioner that as per the prosecution, the occurrence had taken place at 10.15 p.m on 09.08.2010 and the deceased was taken to the hospital at 11.30 p.m, but the complaint was lodged only on 10.08.2010 at 01.00 a.m and the delay of 2-1/2 hours has not been explained by the prosecution, especially the police station is the adjacent building of the Government Hospital. The learned counsel has drawn the attention of this Court to the evidence of P.W.1 to show that the very complaint Ex.P.1 was prepared at the dictation of the police and the person, who prepared FIR, namely, Rangaraj, was not examined by the prosecution. It is further contended that according to the prosecution, the first accused raised hue and cry against temple festival committee for his non-inclusion as a member of the committee, but P.W.7, who is the President of the committee has stated before the Court that even in the earlier occasion, A1 was not a committee member and hence, the motive for the occurrence was also not established by the prosecution. It is next contended that there are contradictions in the evidence of P.Ws.1, 2, 3, and 6, with regard to the place of occurrence. According to the prosecution, the occurrence had taken place in front of the drama stage, but the witnesses have stated that the occurrence had taken place before the Muniyandi house. Further, the investigation officer P.W.13 has admitted that the accident register and the serology report were not produced, which creates doubt about the case of the prosecution.

5.Per contra, Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor, has presently opposed this petition and argued that the



eyewitnesses have categorically spoken about the manner of the crime i.e. overt-acts attributed against the accused and the motive for the occurrence and there is no reason to reject the evidence of the eyewitnesses P.W.2, P.W.3 and P.W.6. The learned counsel further contended that the deceased interfered only to pacify the accused, but, the first accused took out a knife from his hip and inflicted cut injuries on the deceased and the medical evidence also support the case of the prosecution. The delay in lodging the complaint was also explained and hence, he prays for dismissal of this petition.

6. In the instant case, it is the case of the prosecution that on 09.08.2010 at about 10.15 a.m all three accused have questioned the committee members for non-inclusion of the first accused in the temple festival committee. The evidence of P.W.7, who is the President of the festival committee, would show that even in the earlier occasion, the first accused was not a committee member. Ex.P.1 complaint is said to have been given by the P.W.1 to P.W.11 at 01.00 a.m on 10.08.2010 and on the basis of which, the criminal case was registered. P.W.13 has given evidence that on the date of occurrence i.e., on 09.08.2010, the police bandobust was posted in the scene of occurrence, but he did not examine any of the persons who were posted for bandobust. As rightly argued by the learned counsel for the petitioner, the delay of 2-1/2 hours in lodging the complaint was not properly explained by the prosecution. That apart, P.W.13 has also admitted in his evidence that the statement of P.W.4 to P.W.6 were sent to the Court only on 16.08.2010. Further, admittedly, no independent witness was examined to substantiate the charges against the accused, even though the occurrence is said to have taken place in a public place and witnessed by the general public.

7. Taking note of the above facts, we are inclined to suspend the substantive sentence of imprisonment imposed on the petitioner, subject to the following conditions:-

i. The petitioner 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, Devakottai.

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

iii. The petitioner shall appear before the learned Judicial Magistrate, Devakottai 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 is not able to appear, leave is granted to the petitioner to file an application under Section 317 Cr.P.C. and appear before the Committal Court on



any other day, as determined by the Committal Court, in lieu of the day on which they would absent.

sd/-
15/10/2020

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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 JUDICIAL MAGISTRATE, DEVAKOTTAI
- 2.DO THRO'THE CHIEF JUDICIAL MAGISTRATE,
SIVAGANGAI DISTRICT
- 3.THE INSPECTOR OF POLICE,
DEVAKOTTAI POLICE STATION,
SIVAGANGAI DISTRICT.
- 4.THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.
- 5.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.R.ALAGUMANI, Advocate (SR-7100[I] dated 16/10/2020)

ORDER
IN
CRL MP(MD) No.1616 of 2020
IN
CRL A(MD) No.62 of 2020
Date :15/10/2020

SKN
AE/VR/SAR-IV (23.10.2020) 4P 7C