



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Monday, the Twenty Fourth day of August Two Thousand and Twenty

PRESENT

The Hon'ble Mr Justice K.KALYANASUNDARAM
and
The Hon'ble Mrs.Justice T.KRISHNAVALLI

CRL MP(MD) No.2898 of 2020
IN
CRL A(MD) No.151 of 2020

1. DHARMARAJ

2. RAMARAJ

... PETITIONERS/APPELLANTS 1&2

Vs

THE STATE REP. BY
THE INSPECTOR OF POLICE,
PASUPATHIPALAYAM CIRCLE,
VELLIYANAI POLICE STATION,
KARUR DISTRICT.
CR NO.40/2018

... RESPONDENT/RESPONDENT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence of Imprisonment imposed by the Hon'ble Additional Session Court(Fast Track Mahila Court), Karur in S.C.No.98 of 2018 dated on 03/10/2018 for having and enlarge the Petitioners/Appellants on bail, pending disposal of the above Criminal Appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of MR.AJMAL KHAN, Senior counsel for M/S.R.GANESHPRABU for the petitioners 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 K.KALYANASUNDARAM, J.]

The petitioners herein have been arrayed as accused Nos.1 and 2 respectively in the Sessions Case No.98 of 2018, on the file of the Additional Sessions Court (Fast Track Court), Karur.



2. There were totally three accused as per the charge sheet. The conviction and sentence imposed on the petitioners (A1 & A2) are as follows:

Accused	Section of Law	Sentence of imprisonment
A1	120 (B) I.P.C.	To undergo life imprisonment and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for three (3) months.
	302 I.P.C.	To undergo life imprisonment and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for three (3) months.
	201 I.P.C.	To undergo rigorous imprisonment for three (3) years and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for three (3) months.
A2	120 (B) I.P.C.	To undergo life imprisonment and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for three (3) months.
	302 I.P.C.	To undergo life imprisonment and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for three (3) months.
	201 I.P.C.	To undergo rigorous imprisonment for three (3) years and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for three (3) months.

3. Aggrieved over the said conviction and sentence, the petitioners have filed the above criminal appeal and pending appeal, they have filed this criminal miscellaneous petition seeking suspension of substantive sentence of imprisonment imposed on them as stated above.

4. The case of the prosecution is that Karthi and the first accused Dharmaraj were close friends. When they were returning from Palani in a bus, they had an occasion to meet Soundarya / P.W.4, who was studying B.A. I year at Palani. P.W.4 used to talk with A1 as well as the deceased. It is the further case of the prosecution that sometime later, P.W.4 did not attend the call made by the deceased. The deceased was under the impression that A1 was responsible for that. So, the deceased quarrelled with A1 and also assaulted him and the same was informed by A1 to his elder brother Ramaraj / A2, who was working at Thiruppur. Thereafter, on 19.11.2017, at 07.30 p.m., A2 came to Karur and he called his younger brother A1. Thereafter, both of them purchased beer bottles and also took their friend Arunkumar alias Arun / A3 to Allaligoundanur Graveyard, where they hatched conspiracy to murder Karthi.



5. It is the further case of the prosecution that in order to execute the conspiracy, A3 called Karthi through his mobile number to consume beer and after his arrival to the burial ground, A2 questioned the attack made by Karthi on his younger brother A1 and attacked Karthi with beer bottle. When Karthi attempted to run away from the scene of occurrence, A2 and A3 caught hold of Karthi and A1, by using kerchief strangled him and thereby, he was done to death.

6. The Trial Court accepting the evidence adduced on the side of the prosecution, convicted and sentenced all the accused for the offence under Sections 120(B), 302 and 201 I.P.C.

7. Mr.Ajmal Khan, learned Senior Counsel, assisted by Mr.R.Ganesh Prabu, learned counsel on record for the petitioners, would submit that the entire prosecution case is false. According to the learned Senior Counsel, the first information report came to be registered on the basis of the complaint given by P.W.1 Mariammal, who is the Village Administrative Officer, at 08.30 a.m. on 20.11.2017 and thereafter, P.W.28 Chandrasekaran, Investigating Officer, came to the place of occurrence and commenced investigation. According to the learned Senior Counsel, the other witnesses, namely, P.Ws.5, 7, 9, 15 and 27 deposed that the Police was informed about the occurrence even at 05.30 a.m. on 20.11.2017 and the Police was also present in the place of occurrence at 06.00 a.m. on 20.11.2017. Therefore, genesis of the case has been suppressed by the prosecution.

8. It is further contended that there is no eye-witness to the occurrence and the last seen theory spoken by P.Ws.11, 12, 14 and 15 creates doubts over the prosecution case. According to the learned Senior Counsel, P.W.7 - mother of the deceased deposed that on 20.11.2017 morning itself the Police have recovered beer bottles and the kerchief, which were said to have been used by the accused at the time of the occurrence and hence, the arrest of the accused at 04.00 p.m. on 20.11.2017 and recovery of the material objects are all false. It is further submitted that the statements obtained from the witnesses have been suppressed by the prosecution and hence, the accused are entitled for suspension of sentence.

9. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor would argue that through P.Ws.7, 8 and 9, the prosecution has proved the motive for commission of the offence. The last seen theory was also established through P.Ws.11 and 14. The prosecution has proved the arrest of the accused, their confession and recovery of the material objects and hence, there is no flaw in the Judgment of the Trial Court.



10. Heard both sides and perused the materials available on record.

11. In the case on hand, the motive alleged by the prosecution is that P.W.4 was a friend of both A1 and the deceased and both were talking with P.W.4 through cellphone. Since P.W.4 stopped to attend the calls made by the deceased, he is said to have attacked A1, which is prior to the occurrence. A perusal of the evidence of P.W.1 would show that the criminal case was registered on the basis of the complaint Ex.P1 at 08.30 a.m., on 20.11.2017, whereas the occurrence had taken place on 19.11.2017 at 08.30 p.m. The evidence of P.W.15 would show that he came to know about the involvement of the accused in the criminal case at 05.30 a.m. and gave a complaint to the Police at 06.00 a.m. on 20.11.2017. P.W.27 Sub-Inspector of Police, who registered the F.I.R., has also admitted that he had gone to the place of occurrence at 06.30 a.m. on 20.11.2017. The other witnesses have spoken that the Investigating Officer was also present in the scene of occurrence at 07.30 a.m. P.W.28 would depose that the accused were arrested on 20.11.2017 at 04.30 p.m. and on the basis of their confession statement, material objects have been recovered. As rightly pointed out by the learned Senior Counsel, the evidence of the other prosecution witnesses would show that the complaint reached the Police before 08.30 a.m. on 20.11.2017 and the Police was also present in the scene of occurrence and recovered beer bottles and karchief.. Therefore, it is difficult to accept the prosecution case that the accused were arrested on 20.11.2017 and based on their confessions, recovery of M.Os. have been effected.

12. Considering the above aspects, we are inclined to suspend substantive sentence imposed on the petitioners during the pendency of the appeal. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment alone imposed on the petitioners is suspended, subject to the following conditions:

- i. The petitioners are directed to be enlarged on bail on each of them 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 learned Judicial Magistrate No.II, Karur.
- 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 Passbook to ensure their identity.
- iii. The petitioners shall appear before the learned



Judicial Magistrate No.II, Karur, 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 petitioners are not able to appear, leave is granted to them 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/-
24/08/2020

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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 ADDITIONAL SESSIONS JUDGE,
FAST TRACK MAHILA COURT,
KARUR.
2. THE JUDICIAL MAGISTRATE NO.II,
KARUR.
3. -DO- THROUGH: THE CHIEF JUDICIAL MAGISTRATE,
KARUR.
4. THE SUPERINTENDENT ,
CENTRAL PRISON,
TRICHY.
5. THE INSPECTOR OF POLICE,
PASUPATHIPALAYAM CIRCLE,
VELLIYANAI POLICE STATION,
KARUR DISTRICT.



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

WEB COPY

ORDER

IN

CRL MP(MD) No.2898 of 2020 IN

CRL A(MD) No.151 of 2020

Date :24/08/2020

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SRS/ JC/ SAR-III/ 31.08.2020/ 6P/7C