



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

Tuesday, the First day of September Two Thousand Twenty

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PRESENT

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

CRL MP(MD) No.2382 of 2020
IN
CRL A(MD) No.103 of 2020

UMAPATHI

... APPELLANT/SOLE ACCUSED

Vs

THE STATE REP. BY
THE INSPECTOR OF POLICE,
PARAMAKUDI TOWN POLICE STATION,
RAMANTHAPURAM DISTRICT.
CR.No.280 OF 2016

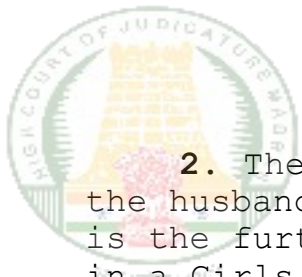
... RESPONDENT/COMPLAINANT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence imposed against the petitioner in S.C.No.86 of 2017, dated 12.02.2020 on the file of the Additional District and Sessions Court, Paramakudi and enlarge the petitioner 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 M/S.M.SUBASH BABU, 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 K.KALYANASUNDARAM, J.]

The petitioner is the sole accused in Sessions Case No.86 of 2017, on the file of the learned Additional District and Sessions Judge, Paramakudi. He was charged for the offence under Section 302 I.P.C. The learned Sessions Judge, by Judgment dated 12.02.2020, convicted and sentenced him to undergo life imprisonment and to pay a fine of Rs.3,000/- (Rupees three thousand only), in default to undergo one year simple imprisonment for the offence under Section 302 I.P.C. Aggrieved over the conviction and sentence, the petitioner has preferred the present criminal appeal. Pending appeal, the petitioner has filed this criminal miscellaneous petition seeking to suspend substantive sentence of imprisonment imposed on him by the Sessions Court in the above sessions case.



2. The case of the prosecution is that the deceased Rajkumar is the husband of P.W.1 Jeeva, while the petitioner is her brother. It is the further case of the prosecution that the deceased was working in a Girls Higher Secondary School in Paramakudi, where he developed intimacy with his student Ranya and thereafter, they started living together. It is the further case of the prosecution that the deceased made a complaint against the petitioner stating that he had constructed a house encroaching upon the Government property. Due to which, on 25.06.2016, at about 09.30 p.m., when the petitioner was proceeding near Railway over-bridge at Ponnaiapuram, quarrel ensued between the petitioner and the deceased and the petitioner attacked the deceased with billhook and caused his death.

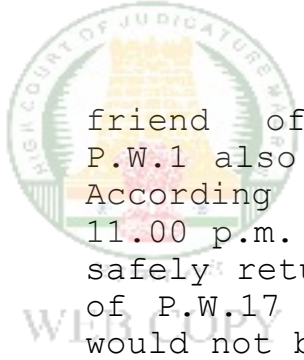
3. The prosecution, in order to prove the case against the petitioner, examined 17 witnesses, among them P.Ws.2, 9 and 14 were cited as eye-witnesses. Though P.W.2 had supported the case of the prosecution, admittedly, P.Ws.9 and 14 have turned hostile. So, the prosecution case rests mainly on the evidence of P.W.2

4. Mr.M.Subash Babu, learned counsel for the petitioner, would argue that the evidence of P.W.2 is unreliable and hence, the conviction based on the evidence of P.W.2 is liable to be set aside. In order to strengthen his argument, the learned counsel referred the evidence of P.W.17 Ranya. According to the learned counsel, if P.W.2 had seen the occurrence at 09.30 p.m. on 25.06.2016, he would not have replied to P.W.17 / second wife of the deceased at 10.30 p.m. on 25.06.2016 that the deceased had gone to his house. It is the further submission of the learned counsel for the petitioner that P.W.2 was planted by the prosecution, otherwise, the Investigating Officer would not have availed the service of Dog Squad. According to the learned counsel, the delay of four hours in sending the F.I.R. to Court remains unexplained.

5. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor, submitted that the deceased is none other than the brother-in-law of the petitioner and the motive against the petitioner has been categorically established by the prosecution. The learned Additional Public Prosecutor has also relied on the evidence of P.W.8, who would depose that eviction proceedings had been initiated against the petitioner based on the complaint given by the deceased. It is further contended by the learned Additional Public Prosecutor that there is no delay in lodging the F.I.R. and sending the same to the Court and therefore, prayed for dismissal of the miscellaneous petition.

6. Heard the rival submissions and perused the materials available on record.

7. In the instant case, as per the prosecution, P.Ws.2, 9 and 14 have witnessed the occurrence at 09.30 p.m. on 25.06.2016. A perusal of the evidence of P.W.2 would show that he is not the close



friend of the deceased and he had not visited the house of P.W.1 also. P.W.17 is said to be the second wife of the deceased. According to P.W.17, she spoke to P.W.2 between 10.30 p.m. and 11.00 p.m. on 25.06.2016 and she was informed that the deceased had safely returned to his house. Therefore, considering the evidence of P.W.17 and the evidence of P.W.2, we are of the view that it would not be safe to rely on the evidence of P.W.2. Further, P.W.15 - Investigating Officer has admitted that the service of the Dog Squad was availed by the prosecution. If the prosecution was sure about the accused, they would not have availed the service of the Dog Squad.

8. Considering the above facts and circumstances of the case, we are inclined to suspend the substantive sentence of imprisonment imposed on the petitioner. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment imposed on the petitioner alone is suspended, 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 learned Judicial Magistrate, Paramakudi.

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.

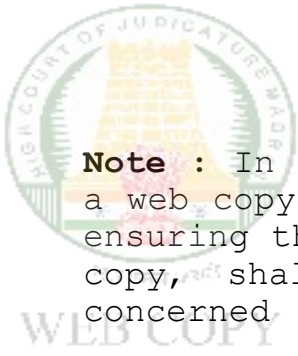
iii. The petitioner shall appear before the learned Judicial Magistrate, Paramakudi, at 10.30 a.m. on the first working day of every English Calendar month until further orders.

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/-
01/09/2020

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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 DISTRICT AND SESSIONS JUDGE,
PARAMAKUDI.
 2. DO-THROUGH : THE PRINCIPAL DISTRICT AND SESSIONS JUDGE,
RAMANATHAPURAM DISTRICT.
 3. THE JUDICIAL MAGISTRATE, PARAMAKUDI.
 4. DO-THROUGH : THE CHIEF JUDICIAL MAGISTRATE,
RAMANATHAPURAM DISTRICT.
 5. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
 6. THE INSPECTOR OF POLICE,
PARAMAKUDI POLICE STATION,
RAMANTHAPURAM DISTRICT.
 7. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.
- +1 CC to M/s.M.SUBASH BABU, Advocate (SR-6203[I] dated 01/09/2020)

ORDER
IN
CRL MP (MD) No.2382 of 2020
IN
CRL A (MD) No.103 of 2020
Date :01/09/2020

KRK
TE/AKM/SAR-I : 07/09/2020 : 4P/9C