



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

Wednesday, the Fifth day of August Two Thousand Twenty

PRESENT

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

CRL MP(MD) No.2926 of 2020
IN
CRL A(MD) No.579 of 2019

MUTHUPANDI

... PETITIONER/ APPELLANT/
ACCUSED

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
SETHUBAVACHATRAM POLICE STTION,
THANJAVUR DISTRICT.
CRIME NO.149/2017

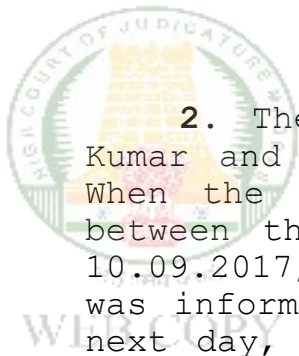
... RESPONDENT/ RESPONDENT/
COMPLAINANT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the order of sentence passed by III Additional District Judge, Pattukottai dated 29/08/2019 made in S.C.No.85 of 2018.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.A.SELVENDRAN, 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 herein, who was charged for the offence under Section 302 I.P.C. simpliciter, was tried in S.C.No.85 of 2018, before the learned III Additional District Judge, Pattukottai and convicted for the said offence and sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/- (Rupees ten thousand only), in default, to undergo six months simple imprisonment. Aggrieved over the said conviction and sentence, the petitioner has filed the above criminal appeal and pending appeal, he has filed this criminal miscellaneous petition seeking suspension of substantive sentence of imprisonment imposed on him as stated above.



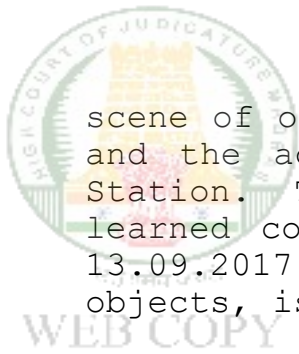
2. The case of the prosecution is that the deceased Senthil Kumar and the accused Muthupandi were working in an Ice Company. When the deceased was doing more business, there was a quarrel between the accused and the deceased. In pursuance thereof, on 10.09.2017, the accused threatened the deceased over Phone and it was informed to P.W.1, who is the friend of the deceased. On the next day, at 12.00 Noon, when P.W.1 had gone to the house of the deceased, she found the deceased in a sitting position and blood was oozing from the nose. Then, with the help of her husband P.W.7, P.W.1 lodged a complaint at 05.00 p.m. on 12.09.2017. P.Ws.2, 3 and 4 are said to have seen the accused with the deceased on 11.09.2017, when they were quarrelling in the scene of occurrence.

3. In order to prove the case of the prosecution, P.Ws.1 to 18 were examined and Exs.P1 to P13 and M.Os.1 to 4 were marked. On the side of the petitioner, no witness was examined and no document was marked. As stated supra, the Trial Court accepting the prosecution case, convicted the petitioner and sentenced him to undergo life imprisonment.

4. Mr.A.Selvendran, learned counsel for the petitioner, would submit that there is no eye-witness to the occurrence and the evidence of P.Ws.1 to 3 would make it clear the entire prosecution case is false. It is the submission of the learned counsel for the petitioner that as per the prosecution case, the F.I.R. was lodged by P.W.1 on 12.09.2017 at 05.00 p.m. But, during the course of cross-examination, P.Ws.1, 2 and 4 have deposed that the Police were present in the scene of occurrence as early as 09.00 a.m. and 10.00 a.m. on 11.09.2017. It is also argued that the witnesses have admitted the presence of the accused in the Police Station on 11.09.2017 and hence, the story of arrest, confession and recovery are false and hence, the petitioner is entitled for suspension of sentence during the pendency of the appeal.

5. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor, would submit that motive has been established by the prosecution through P.W.1 and the last-seen theory was proved through the evidence of P.Ws.2 to 4 and based on the confession statement, there was a recovery. Further, the Trial Court, on proper appreciation of the evidence adduced by the prosecution side witnesses, has rightly convicted the accused and hence, prayed for dismissal of the petition.

6. In the case on hand, as per the prosecution case, due to business rivalry, there was enmity between the deceased and the accused. When the accused threatened the deceased over Phone on 11.09.2017, it was informed to P.W.1. P.W.1 would further state on the next day, she saw the deceased at 12.00 Noon. But, the complaint was lodged only at 05.00 p.m. It is evident from the cross-examination of P.Ws.1 to 3, the Police were present in the



scene of occurrence even at 09.00 a.m. and 10.00 a.m. on 11.09.2017 and the accused was also present on the same day in the Police Station. Therefore, this Court finds force in the contention of the learned counsel for the petitioner that the arrest of accused on 13.09.2017 and the confession, which led to recovery of material objects, is highly doubtful.

7. In the light of the above facts, this Court is inclined to suspend substantive sentence imposed on the petitioner during the pendency of the appeal. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment alone imposed on the petitioner 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, Pattukottai.

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, Pattukottai, 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/-
05/08/2020

/ TRUE COPY /

/ /2020
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 III ADDITIONAL DISTRICT JUDGE,
PATTUKOTTAI.
2. THE JUDICIAL MAGISTRATE, PATTUKOTTAI.
3. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THANJAVUR DISTRICT AT KUMBAKONAM.
4. THE SUPERINTENDENT,CENTRAL PRISON, TRICHY.
5. THE INSPECTOR OF POLICE
SETHUBAVACHATRAM POLICE STTION, THANJAVUR DISTRICT.
6. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP (MD) No.2926 of 2020
IN
CRL A (MD) No.579 of 2019
Date :05/08/2020

MS/JC/SAR-2/13.08.2020/4P.7C