



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

Thursday, the Nineteenth day of November Two Thousand and Twenty

PRESENT

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

CRL MP(MD) No.3440 of 2020
IN
CRL A(MD) No.213 of 2020

1 MANICKAM
2 MANIVEL
3 VETRIVEL

... PETITIONERS/ APPELLANTS/
ACCUSED NO.1 TO 3

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
THOTTIYAM POLICE STATION,
TRICHY DISTRICT.
CRIME NO.149/2016

... RESPONDENT/ RESPONDENT/
COMPLAINANT

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 of Imprisonment alone in sessions Case no.160/2017 dated 28/02/2020 on the file of the Learned First Additional District and Sessions Judge(PCR), Tiruchirappalli and enlarge the petitioners/ Accused no.1 to 3 on bail, till the disposal of the Criminal Appeal.

PRAYER IN CRL A(MD) No.213 of 2020:

To admit this appeal on file and call for the records from the lower court and set aside the judgment of the lower court passed by the learned First Additional District and Sessions Judge(PCR), Tiruchirappalli in Sessions Case No.160 of 2017 dated 28.02.2020, by allowing this appeal.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.N.MOHIDEEN BASHA, Advocate for Mr.T.SHANMUGAM, Advocate for the petitioners and of Mr.K.K.RAMAKRISHNAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

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



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

This criminal appeal has been preferred by A1 to A3 in S.C.No.160 of 2017, on the file of the I Additional District and Sessions Court (PCR), Tiruchirappalli, challenging their conviction and sentence for the offences under Sections 294(b), 326, 307, 302 r/w 34 I.P.C. The Trial Court having found that the prosecution has proved the charges, convicted and sentenced the accused including life imprisonment.

2. The case of the prosecution is that the deceased Murugan is the brother of Manickam (A1). A2 and A3 are sons of A1. As per the prosecution case, in the oral partition, the house occupied by Manickam (A1) was allotted to the deceased Murugan. Since the deceased Murugan had not transferred the house in favour of Manickam (A1), there was enmity in their family. It is the further case of the prosecution that on 04.06.2016, at 06.00 p.m., a wordy quarrel ensued between the family of the accused party and the deceased party over stagnation of water in front of the house of Manickam (A1). Subsequently, the accused took Aruvals from their house and attacked the deceased Murugan as well as Kumaravel (P.W.2) and the deceased Murugan succumbed to the injuries.

3. Mr.N.Mohideen Basha, learned counsel representing Mr.T.Shanmugam, learned counsel on record for the petitioners, would urge that the origin of the case has been suppressed by the prosecution. According to the learned counsel, both the deceased Murugan as well as Singaravel (P.W.1) were immediately taken to the Government Hospital, Thottiam, at 06.45 p.m. from where intimation was sent to the Police. Wherefrom the deceased Murugan was taken to the Government Hospital, Trichy and Kumaravel (P.W.2) to a Private Hospital at Trichy. Second intimation was sent from Trichy Hospitals also. On receiving intimations, Police reached the Hospital. It is further stated that the Doctor, who treated Kumaravel (P.W.2) has categorically deposed that Kumaravel (P.W.2) was conscious always, but, the prosecution chose to receive a complaint from Singaravel (P.W.1) and registered the case, which would show that the prosecution has failed to receive complaint from the injured witness P.W.2. It is further submitted that even if the entire prosecution case is accepted, the offences committed by the accused would not come under Section 302 I.P.C., at the most, they are punishable under Section 304(II) I.P.C. The learned counsel, in this regard, has referred the evidence of Singaravel (P.W.1) and Kumaravel (P.W.2) to show that only during the course of wordy quarrel, the occurrence had taken place.

4. Per contra, Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the respondent, would urge that the prosecution has proved the motive for the occurrence and the involvement of the accused in this case. It is further stated that



Kumaravel (P.W.2), who is an injured eyewitness, has categorically spoken about the overtacts attributed against the accused and there is no reason to come to the conclusion that he has falsely implicated the accused and therefore, prayed for dismissal of the application.

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5. Heard the learned counsel on either side and perused the materials available on record.

6. In this case, Kumaravel (P.W.2) is the injured eyewitness, Singaravel (P.W.1) is his brother. The prosecution has projected P.Ws.1 to 5 as eyewitnesses to the occurrence. They have consistently spoken about the overtacts attributed against the accused. A perusal of the evidence would show that on 04.06.2016, wordy quarrel was ensued between the family of the accused party and the deceased party due to stagnation of water in front of the house of Manickam (A1). Only thereafter the accused are said to have brought M.Os.1 to 3 and attacked the deceased Murugan as well as Kumaravel (P.W.2). All the eyewitnesses have deposed that Manickam (A1) attacked Kumaravel (P.W.2) on his right hand, while Manivel and Vetrivel (A2 & A3) inflicted injuries on vital parts of the deceased Murugan.

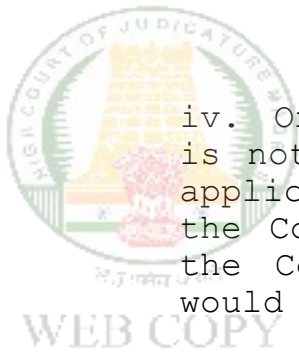
7. Considering the overtact attributed against Manickam (A1), we are inclined to grant suspension of sentence only to him. Since Manivel (A2) and Vetrivel (A3) have attacked the deceased Murugan and inflicted injuries, which resulted in his death, we are of the view that they are not entitled for suspension of sentence at this stage and therefore, the criminal miscellaneous petition is dismissed as against Manivel (A2) and Vetrivel (A3).

8. Accordingly, the criminal miscellaneous petition is partly allowed and the substantive sentence of imprisonment imposed on the first petitioner (A1) alone is suspended, subject to the following conditions:

i. The first petitioner (A1) 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, Musiri.

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 first petitioner (A1) shall appear before the learned Judicial Magistrate, Musiri, 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 first petitioner (A1) is not able to appear, leave is granted to him to file 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 he would absent.

sd/-
19/11/2020

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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 FIRST ADDITIONAL DISTRICT AND SESSIONS JUDGE (PCR),
TIRUCHIRAPPALLI.
2. THE JUDICIAL MAGISTRATE, MUSIRI,
TRICHY DISTRICT.
3. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TRICHY DISTRICT.
4. THE INSPECTOR OF POLICE
THOTTIYAM POLICE STATION, TRICHY DISTRICT.
5. THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.
6. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.3440 of 2020
IN
CRL A(MD) No.213 of 2020
Date : 19/11/2020

MS/VR/SAR-2/26.11.2020/4P.7C