



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

Reserved on : 09.07.2020
Pronounced on : 13.07.2020

WEB COPY

PRESENT

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

CRL MP(MD) No.3079 of 2020
IN
CRL A(MD) No.168 of 2020

SIVAKANDAN

... PETITIONER/APPELLANT/
ACCUSED No.5

Vs

THE STATE REP. BY
THE INSPECTOR OF POLICE,
CB CID NAGERCOIL,
CRIME NO.868 OF 2010
OF KOTTOR POLICE STATION,
KANYAKUMARI DISTRICT.

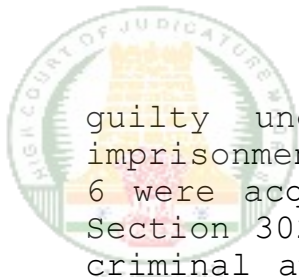
... RESPONDENT/RESPONDENT/
COMPLAINANT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence imposed on the petitioner by the learned Principal Sessions Judge, Tirunelveli in S.C.No.600/2017 dated 12.02.2020 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 Mr.GOPALA KRISHNA LAKSHMANA RAJU, Senior Counsel for Mr.S.KARTHIKEYAN, 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 arrayed as 5th accused in S.C.No.600 of 2017 on the file of the learned Principal District and Sessions Judge, Tirunelveli. Though totally there are six accused in this case, A5 was charged for the offences under Sections 120(B), 148, 341 and 294(b) IPC and Section 3(i) of Tamil Nadu Public Property (Damages and Loss) Act r/w 149, 302 r/w 129(B), 506(ii) IPC, he was found



guilty under Section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/-. The accused 2, 3 and 6 were acquitted and the rest of the accused were convicted under Section 302 IPC. Against which, the present petitioner has filed a criminal appeal before this Court. Pending appeal, the petitioner has also filed the present petition for suspension of the sentence imposed on him.

2.The case of the prosecution is that the accused Nos.2 and 3, namely, Udhayakumar and Udhayasankar are brothers and they were in Management and Administration of Mutharamman Temple and Kamaraj Polytechnic College. It appears that there are two groups and one group supports the accused Nos.2 and 3 and the other group is opposing the Management and day-to-day activities of the persons in management. It also appears that due to enmity, criminal cases came to be filed against both the groups from 2001 to 2010. It is the further case of the prosecution that due to enmity, the accused Nos.3 and 4, on 07.07.2020 at 08.30 a.m, conspired with the other accused to eliminate the deceased Manikandan @ Ayyappan. In pursuance of the conspiracy, on 07.07.2010 at 6.30 p.m, when the deceased was sitting inside the car near Rajalakshmi Hospital, Irulappapuram Junction, accused Nos.1, 4, 5 and 6 came in two motorcycles with Aruval and attacked the deceased, which resulted instantaneous death of the deceased Manikandan @ Ayyappan.

3.Mr.Goopalakrishna Lakshmana Raju, learned Senior Counsel for the petitioner argued that though the accused were charged under various Sections of Indian Penal Code including conspiracy, they were acquitted from other charges and they were convicted only under Section 302 IPC simpliciter. The trial Court disbelieving the case of the prosecution, acquitted the accused Nos.2, 3 and 6. It is further contended that the occurrence is said to have been taken place opposite to the hospital of P.W.12, however, when the Doctor Mr.Thirugnanasampantham P.W.12 enquired about the accused, P.W.1 was not in a position to name the accused. The learned counsel for the petitioner further added that the eyewitnesses P.Ws.2 and 3 have turned hostile and other eyewitnesses, P.Ws.1, 4 and 5 are interested witnesses and there is no flaw in the investigation.

4.Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor appearing for the respondent/State would urge that the prosecution has established the motive for this crime P.Ws.1 to 5 are eyewitnesses to the occurrence. Even though P.Ws.2 and 3 have not supported the case of the prosecution, the charges against the accused have been proved through the other witnesses. It is the further submission of the learned Additional Public Prosecutor that the accused 1, 4 and 5 have intimidatingly attacked the deceased and thereby, he sustained 24 injuries on his vital parts of his body. It is further stated that against the acquittal of the accused Nos.2, 3 and 6, the State is preferring an appeal and hence, the



5. Heard the rival submissions and perused the materials available on records.

6. In the instant case, P.W.1 is the brother of the deceased. He has spoken about the manner of incident that had taken place on 07.07.2020. The evidence of P.W.1 is corroborated by the occurrence witnesses P.Ws.4 and 5. When the accused surrounded the deceased and inflicted multiple injuries, this Court does not find merit in the contention that there is no specific overt act attributed against each accused. It is not disputed that the deceased sustained 24 injuries in the incident and the death was instantaneous. Taking note of the facts of this Court, we are not inclined to suspend the sentence imposed on the petitioner.

7. In the result, this Miscellaneous Petition is dismissed.

sd/-
13/07/2020

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/ /2020
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1. THE PRINCIPAL SESSIONS JUDGE, TIRUNELVELI.
2. THE SUPERINTENDENT,
PALAYAMKOTTAI,
TIRUNELVELI DISTRICT.
3. THE INSPECTOR OF POLICE,
CB CID NAGERCOIL,
KOTTOR POLICE STATION,
KANYAKUMARI DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL MP(MD) No.3079 of 2020
IN
CRL A(MD) No.168 of 2020
Date :13/07/2020

SKN

TE/VR/SAR-III : 16/07/2020 : 3P/5C

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