



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Thursday, the Thirtieth day of July Two Thousand and Twenty

PRESENT

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

CRL MP(MD) No.3368 of 2020
IN
CRL A(MD) No.208 of 2020

PALPANDI

... PETITIONER/APPELLANT

Vs

THE STATE REP. BY
THE INSPECTOR OF POLICE,
CHINNAMANUR POLICE STATION,
CHINNAMANUR,
THENI DISTRICT.
(CRIME NO.265/2013)

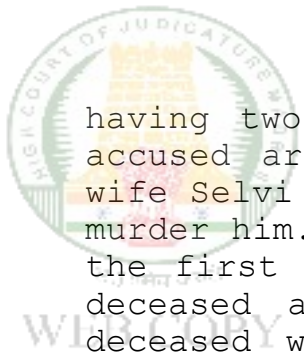
... RESPONDENT/RESPONDENT

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 in S.C.No.104/2014 on the file of the learned Additional District and Sessions Judge (Fast Track Court), Theni, dated 27.08.2019, and enlarge the petitioner / appellant on bail, pending disposal of the Criminal Appeal and thus render justice.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.S.DEENADHAYALAN, 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 along with one Pandian were charged for the offences under Section 302 r/w 34 IPC. They were tried before the Additional District and Sessions Court (Fast Track Court), Theni and they were convicted for the offences under Sections 302 r/w 149 IPC and sentenced to undergo life imprisonment with a fine of Rs.5,000/-, in default, to undergo six months simple imprisonment.

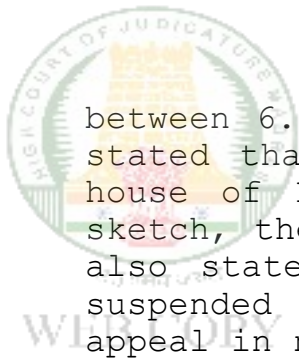


having two wives viz., Selvi and Alagumani. The first and second accused are friends. The first accused suspecting that his first wife Selvi was having illicit intimacy with the deceased, decided to murder him. In pursuance thereof on 09.09.2013, at about 11.30 p.m., the first accused along with second accused went in search of the deceased and at about 1.30 a.m. on 10.09.2013, they found the deceased was sleeping in front of the house of Muthulakshmi at Muthusampuram and the first accused has thrown stone on the head of the deceased and caused his death. P.Ws.1 and 2, who are the wife and daughter of the deceased are said to have witnessed the occurrence. The trial Court accepting the version of the prosecution convicted the accused as stated supra. Aggrieved over the decision of the trial Court, the petitioner preferred this appeal and during pendency of the appeal, he seeks suspension of sentence.

3. Mr.S.Deenadhayalan, learned counsel appearing for the petitioner would argue that the occurrence is said to have taken place at Muthusampuram, whereas the witnesses P.Ws.1 and 2 were residing at Ammapatti village in Veeramani garden house and the distance between the two places is 2 kms and hence, P.Ws.1 and 2 would not have seen the occurrence. It is next contended that the complaint was prepared by P.W.13, who is working as a teacher in a Government Higher Secondary School and he deposed that on 10.09.2013, between 6.30 and 8.00 a.m., he had been in the scene of occurrence and at the request of P.W.1, he prepared a complaint. He further added that P.W.16 has stated that he heard the alarming sound of the deceased at 5.00 a.m. Therefore, the case of the prosecution that the occurrence had taken place at 1.30 a.m. and the case was registered at 4.00 a.m. is totally false. It is also stated that the Investigating Officer-P.W.24 has admitted in his cross examination that in the rough sketch, he has not shown the house of the deceased and P.Ws.1 and 2. It is the submission of the learned counsel that the fact has been suppressed only to suit the prosecution case.

4. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor would submit that P.W.24 in re-examination has stated that Ammapatti and Muthusampuram are adjacent streets and it is not situated with a distance of 2 kms. It is the submission of the learned Additional Public Prosecutor that P.Ws.1 and 2 have categorically deposed before the Court that after hearing the screaming of the deceased, they went to the place of occurrence and saw the acts committed by the accused and there is no discrepancy in their. Hence, he prays for dismissal of this petition .

5. In the instant case, according to the prosecution, the occurrence had taken place at 1.30 a.m. on 10.09.2013 and the occurrence was seen by P.Ws.1 and 2. It is also seen that the First Information Report was registered at 4.00 a.m. But the evidence of P.Ws.13 and 16 would show that the occurrence did not take place as



between 6.30 a.m and 8.30 a.m. P.W.16 in his cross examination has stated that the distance between the place of occurrence and the house of P.Ws.1 and 2 is about 2 kms. Admittedly, in the rough sketch, the residence of the deceased has not been mentioned. It is also stated that the sentence imposed on the second accused was suspended by this Court. There is no likelihood of taking up the appeal in near future.

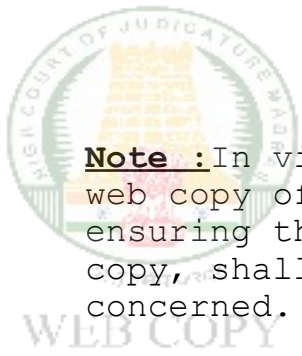
6. Taking note of the above facts, we are *prima facie* convinced that the petitioner is entitled for suspension of substantive sentence imposed on him during the pendency of the appeal. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment alone imposed 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 Additional District and Sessions Court (Fast Track Court), Theni.
- 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 Additional District and Sessions Court (Fast Track Court), Theni, 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/-
30/07/2020

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/ /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 ADDITIONAL DISTRICT
AND SESSIONS JUDGE (FAST TRACK COURT),
THENI.
2. THE SUPERINTENDENT,
CENTRAL PRISON,
MADURAI.
3. THE INSPECTOR OF POLICE,
CHINNAMANUR POLICE STATION,
CHINNAMANUR,
THENI DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER

IN

CRL MP(MD) No.3368 of 2020 IN

CRL A(MD) No.208 of 2020

Date :30/07/2020

RJ2

SRS/ JC/ SAR-II/ 06.08.2020/ 4P/5C