



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

Wednesday, the Second day of December Two Thousand and Twenty

PRESENT

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

CRL MP(MD) No.3900 of 2020
IN CRL A(MD) No.248 of 2020

MURUGAN

... PETITIONER/ ACCUSED

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
BODI TOWN POLICE STATION,
THENI DISTRICT.
CRIME NO.558/2015

... 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 imposed on the petitioner/Appellant by the Learned Additional District and Sessions Judge, Fast Track Court, Theni in S.C.No.24 of 2016 dated 31/01/2020 and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

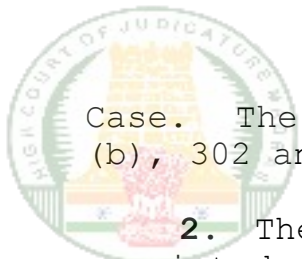
PRAYER IN CRL A(MD) No.248 of 2020:

To call for the records and set aside the order of conviction and sentence passed in S.C.No.24 of 2016 dated on 31.01.2020 on the file of the learned Additional District and Sessions Judge, (Fast Track), Theni and allow this appeal and acquit the appeal/ accused from the charges leveled against them and thus render justice.

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.G.KARUPPASAMY PANDIAN, Advocate for Mr.AK.AZAGARSAMI, 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 appellant in this appeal was arrayed as A1 in S.C.No.24 of 2016, on the file of the Additional District and Sessions Court (Fast Track Court), Theni. One Parvathi was A2 in the said Sessions



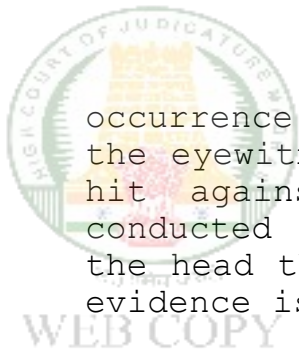
Case. The charges framed against them were under Sections 341, 294 (b), 302 and 302 r/w 109 I.P.C.

2. The learned Trial Judge, vide Judgment dated 31.01.2020, convicted the petitioner / appellant for the offence under Section 302 I.P.C. and sentenced him to undergo life imprisonment with a fine of Rs.5,000/-, in default to undergo one year simple imprisonment and sentenced him to undergo one month rigorous imprisonment under Section 341 I.P.C. with a fine of Rs.500/-, in default to undergo one month simple imprisonment, while acquitting A2 from all the charges framed against her.

3. The case of the prosecution is that the accused party and the deceased party are residents of J.K.Patty Muthumariamman Kovil Street. The deceased Ramar is the husband of A2 - Parvathi and their marriage was performed 18 years ago and during the lawful wedlock, they were blessed with two female children, namely, Rajeswari and Bhuvaneswari. While so, A1 - Murugan is said to have developed illicit intimacy with A2, which was objected and condemned by the deceased Ramar. On 11.08.2015, at 11.00 a.m. when the deceased questioned A1 for having developed illicit intimacy with A2, she instigated A1 to kill the deceased. In pursuance thereof, on 12.08.2015 at 07.15 a.m., when the deceased was proceeding in his TVS XL Motorcycle bearing registration No.TN60 R8804, A1 waylaid and pushed him down. Thereafter, A1 held the head of the deceased and hit against a rough stone. On seeing witnesses reached the scene of occurrence, A1 took to his heels. Immediately, the deceased was taken to Bodinayakkanur Government Hospital, but he was declared brought dead.

4. The prosecution, in order to substantiate the charges against the accused, examined P.Ws.1 to 6 as eyewitnesses to the occurrence and also relied on the evidence of Balamurugan (P.W.10) to prove the arrest and recovery of material objects involved in this case. Based on their evidence, the Trial Court convicted the accused as stated supra. Challenging the conviction and sentence, the petitioner has filed the above criminal appeal and during pendency of the appeal, he has filed this criminal miscellaneous petition for suspension of sentence imposed on him by the Trial Court.

5. Mr.G.Karuppasamy Pandian, learned counsel representing Mr.A.K.Azagarsami, learned counsel on record for the petitioner / appellant, would argue that though P.Ws.1 to 6 have been cited as eyewitnesses to the occurrence, they would not have seen the occurrence and the defence taken by the accused has been established in the cross-examination of the witnesses. The learned counsel drew the attention of this Court to the cross-examination of P.Ws.2 and 3, where they have stated that after hearing the hue and cry of the deceased, they went along with other witnesses to the scene of



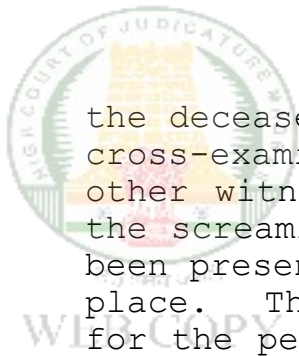
occurrence. It is next contended that even as per the version of the eyewitnesses, A1 by holding the head of the deceased repeatedly hit against a rough stone, but Dr.Ravindranath (P.W.16), who conducted autopsy, would state that he found only two injuries on the head the deceased. Therefore, it is contended that the medical evidence is not supporting the case of the prosecution.

6. The learned counsel for the petitioner would further argue that Balamurugan (P.W.1) stated that he lodged a complaint in the Police Station, which was received by Sahathevan (P.W.17) and the case was registered. But, in the evidence, Parameswari (P.W.4) has admitted that the Police came to the Hospital and recorded the statement of P.Ws.1 and 4, in which both of them have signed. Likewise, the arrest and recovery is also doubtful. According to the learned counsel, the prosecution case is that on 12.08.2015 at 04.00 p.m. A1 was secured by the Police and thereafter, he gave a confession statement and in pursuance thereof, recovery was made. But, Vasanthi (P.W.8) would state that she saw A1 on 12.08.2015 at 10.00 a.m. in the Police Station. Further, Amirthalingam (P.W.11), Constable, who has taken the express report to the Court, has stated that the vehicle involved in this case was found in the Police Station at 09.30 a.m. on 12.08.2015. Furthermore, Balaguru (P.W.19), Investigating Officer, in the cross-examination stated that the vehicle involved in this case i.e. TVS XL Motorcycle (M.O.3), was not at all recovered from the accused. Therefore, the learned counsel contends that the petitioner is entitled for suspension of sentence pending appeal, in the light of the material contradictions in the evidence of witnesses.

7. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor, vehemently opposed the petition by contending that P.Ws.1 to 6 had witnessed the incident and their evidence is natural and credible and there is no reason to disbelieve their evidence. It is also contended that the motive for the commission of offence has been categorically established by the prosecution and only thereafter, the accused was convicted and hence, no ground is made out to grant suspension of sentence.

8. Heard Mr.G.Karuppasamy Pandian, learned counsel representing Mr.A.K.Azagarsami, learned counsel on record for the petitioner and Mr.R.Anandharaj, learned Additional Public Prosecutor for the respondent and carefully perused the materials available on record.

9. In the matter on hand, it is evident from the records that both the accused party and the deceased party belong to same Village and they are neighbours. Balamurugan (P.W.1) is the brother of the deceased Ramar and Kasthuri (P.W.2) is the wife of P.W.1. Balamani (P.W.3) and Parameswari (P.W.4) are sisters of the deceased. They have admitted in their evidence that A1 is their relative, however, he developed illicit intimacy with A2. When this was questioned by



the deceased, he was done to death by the accused. A perusal of the cross-examination of P.Ws.2 and 3 would reveal that even P.W.1 and other witnesses came to the scene of occurrence only after hearing the screaming of the deceased, which shows that they would not have been present in the scene of occurrence, when the incident had taken place. That apart, as rightly pointed out by the learned counsel for the petitioner, P.W.16, Doctor, who conducted postmortem on the dead body of the deceased, has stated that he found only two external injuries on the dead body. But, P.Ws.1 to 6 deposed that A1 repeatedly hit the head of the deceased with a rough stone. Therefore, no corresponding injuries were found on the head of the deceased. With regard to the arrest and recovery, there is a material contradiction in the evidence of the prosecution witnesses. Hence, we are of the opinion that the petitioner / A1 is entitled for suspension of sentence.

10. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment imposed on the petitioner / A1 is suspended, subject to the following conditions:

i. The 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, Bodinayakanur.

ii. The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Trial Court may obtain a copy of their Aadhar card or Bank pass book to ensure their identity.

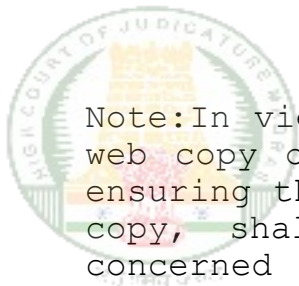
iii. The petitioner / A1 shall appear before the learned Judicial Magistrate Bodinayakanur, at 10.30 a.m. on the first working day of every English Calendar month, until further orders.

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 Trial Court on any other day, as determined by the Trial Court, in lieu of the day on which they would absent.

sd/-
02/12/2020

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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

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TO

1. THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
(FAST TRACK), THENI.
2. THE JUDICIAL MAGISTRATE, BODINAYAKANUR.
3. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THENI DISTRICT.
4. THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
5. THE INSPECTOR OF POLICE
BODI TOWN POLICE STATION, THENI DISTRICT.
6. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.3900 of 2020
IN
CRL A(MD) No.248 of 2020
Date : 02/12/2020

MS/PN/SAR-3/07.12.2020/5P.7C