



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

Thursday, the Thirteenth day of August Two Thousand Twenty

WEB COPY

PRESENT

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

CRL MP(MD) No.3270 of 2020
IN
CRL A(MD) No.195 of 2020

SARAVANAKUMAR

... PETITIONER/APPELLANT/
SINGLE ACCUSED

Vs

THE STATE REP. BY
THE INSPECTOR OF POLICE,
INAMKULATHUR POLICE STATION,
TIRUCHIRAPPALLI DISTRICT.
CR No.47/2017

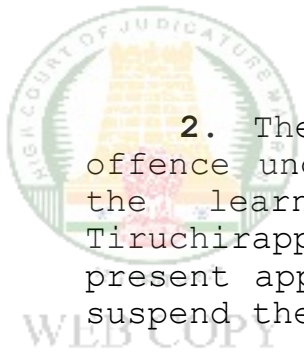
... RESPONDENT/RESPONDENT/
COMPLAINANT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence imposed on the petitioner by the Learned III Additional District and Sessions Court, Tiruchirappalli in S.C.NO.23 of 2018 dated 28/02/2020 and enlarge him on bail pending disposal of the Criminal Appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.S.ASHOK KUMAR, Senior Counsel for Mr.M.JEGADEESH PANDIAN, 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.]

This criminal miscellaneous petition has been filed by the petitioner/appellant seeking to suspend substantive sentence of imprisonment imposed on him by the learned III Additional District and Sessions Court, Tiruchirappalli, by Judgment dated 28.02.2020 in S.C.No.23 of 2018.



2. The sole accused in S.C.No.23 of 2018 was tried for the offence under Sections 294(b), 324 and 302 I.P.C and convicted by the learned III Additional District and Sessions Judge, Tiruchirappalli. Aggrieved over the conviction and sentence, the present appeal has been filed. Pending appeal, this application to suspend the sentence of imprisonment has been filed.

3. The case of the prosecution is that the deceased Radha is the maternal aunt of the accused. The mother of the accused died leaving behind the accused and his two sisters. The accused alone was living separately while his two sisters were living with his maternal aunt, viz., the deceased Radha. It is the further case of the prosecution that the grandmother of the deceased, namely, Chinnammal was owning vast extent of land of 170 acres and the entire property was looked after by the deceased Radha. But they did not agree for partition of the property despite the fact that the accused has been insisting time and again. It is also the case of the prosecution that the deceased had put up a house in the ancestral property, for which, the accused was paid Rs.5,50,000/- in Panchayat and he was also provided with some jewels. While so, on 20.06.2017 morning, the accused went to the house of the deceased and demanded partition, which was not accepted by the deceased and on the same day evening, again the accused went to the house of the deceased demanding partition. During that time, there was a wordy quarrel between the accused and the deceased. Immediately, the accused attacked the deceased with an Aruval and caused injuries. The deceased was taken to Government Hospital, Trichy and she died after ten days.

4. In order to prove the case of the prosecution, P.W.1 to P.W.18 were examined and Ex.P.1 to Ex.23 were marked and M.Os.1 to 3 were also marked. Accepting the case of the prosecution, the trial Court convicted the accused as stated supra.

5. Mr. S. Ashok Kumar, learned Senior Counsel appearing for Mr. M. Jegadeeshpandian learned counsel for the petitioner would submit that the deceased is none other than the maternal aunt of the accused. He would further add that even according to the prosecution, the grandmother of the accused was owning a large extent of property, but they refused to give partition to the accused. The prosecution did not come to court with clean hands and the earliest statement of the deceased was deliberately suppressed by the prosecution. According to the learned Senior Counsel, the evidence of P.W.4 and P.W.7 would show that one Kala, Head Constable of the respondent Police Station recorded the statement from the deceased on 20.06.2017 at 08.00 p.m, but the statement was suppressed by the prosecution. As per the case of the prosecution, P.W.17 recorded the information from the deceased on 21.06.2017, which is marked as Ex.P.14. Though the statement was recorded at 09.00 a.m on 21.06.2017, it reached the concerned Judicial Magistrate Court at 09.40 p.m, whereas the distance is about 10 kms. It is further submitted that in the statement recorded from the



deceased, the presence of the P.W.1 to P.W.3 who are said to have witnessed to the occurrence, were not mentioned and it further shows that the statement was given on the date of occurrence i.e., on 20.06.2017, which creates serious doubt over the prosecution story. It is further contended that if the Court comes to the conclusion that FIR has been fabricated, the oral testimony would be rejected and the accused is entitled for acquittal and prays for suspension of sentence.

6. Per contra, Mr. R. Anandharaj, learned Additional Public Prosecutor would submit that P.W.1 and P.W.4 are the sisters of the accused. P.W.2 and P.W.3 are the grandchildren of the deceased. P.W.1 to P.W.3 have categorically deposed before the Court that they have seen the occurrence and there is no reason to disbelieve the evidence of the eyewitnesses. It is further argued that when the accused was questioned under Section 313 Cr.P.C, he did not dispute his involvement in the crime and hence, he is not entitled for any indulgence of this Court at this juncture.

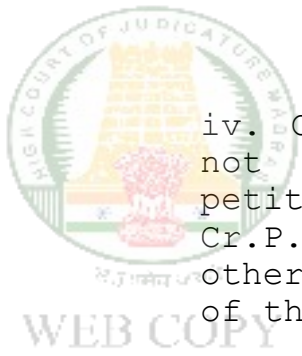
7. In this case, as rightly contended by the learned Senior Counsel appearing for the petitioner that P.W.4 and P.W.17 have categorically deposed before the trial Court that the deceased gave statement to one Kala, who was working as Head Constable in the respondent police station on 20.06.2017, but the earliest statement is not brought before the Court. It is to be noted that the Head Constable Kala was not examined by the prosecution. Ex.P.14 indicates that on 20.06.2017, P.W.17 obtained statement from the deceased, but P.W.17 says that the statement was recorded at 09.00 a.m on 21.06.2017. Further, there is no explanation for the delay of the FIR reaching the Magistrate Court.

8. Considering the above aspects, we are of the opinion that the accused is entitled for suspension of sentence during pendency of the appeal. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment imposed on the petitioner alone 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 Judicial Magistrate No.V, Trichy.

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 shall appear before the learned Judicial Magistrate No.V, Trichy, 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 petitioners are not able to appear, leave is granted to the petitioners 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/-
13/08/2020

/ 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 AND SESSIONS JUDGE,
TRICHY.
2. DO-THROUGH : THE PRINCIPAL DISTRICT AND SESSIONS JUDGE,
TRICHY DISTRICT.
3. THE JUDICIAL MAGISTRATE No.V, TRICHY.
4. DO-THROUGH : THE CHIEF JUDICIAL MAGISTRATE,
TRICHY DISTRICT.
5. THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.
6. THE INSPECTOR OF POLICE,
INAMKULATHUR POLICE STATION,
TIRUCHIRAPPALLI DISTRICT.
7. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL MP(MD) No.3270 of 2020
IN
CRL A(MD) No.195 of 2020
Date :13/08/2020