



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

Wednesday, the Fifth day of August Two Thousand Twenty

PRESENT

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

CRL MP(MD) No.3492 of 2020
IN
CRL A(MD) No.495 of 2019

1 VAIRAVAN
2 VAIRAMUTHU

... PETITIONERS/ACCUSED RANK
2 AND 3

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE,
ODAIPATTI POLICE STATION,
THENI DISTRICT.
CRIME NO.59/2015

... RESPONDENT/ RESPONDENT

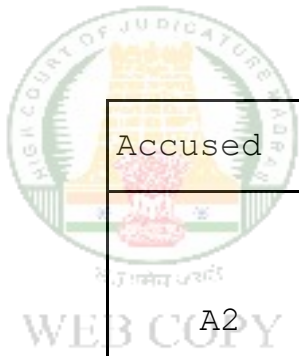
Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence imposed by the conviction and sentence passed by the Learned Additional District Court(Fast Track), Theni in S.C.No.135/2016 dated 13/09/2019 against the petitioners and enlarge the petitioners on bail pending disposal of the main appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.M.AJMAL KHAN, Senior Counsel for M/S.AJMAL ASSOCIATES, Advocate for the petitioners and of Mr.R.ANANDARAJ, 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 petitioners herein have been arrayed as accused Nos.2 and 3 respectively in the Sessions Case No.135 of 2016, on the file of the Additional District Court (Fast Track Court), Theni.

2. There were totally three accused as per the charge sheet and they are brothers. The conviction and sentence imposed on the petitioners (A2 & A3) are as follows:



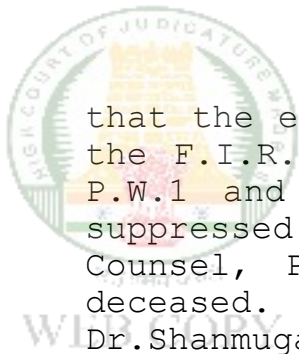
Accused	Section of Law	Sentence of imprisonment
A2	341 I.P.C.	To pay a fine of Rs.500/-, in default to undergo simple imprisonment for one (1) months.
	302 r/w 34 I.P.C.	To undergo life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for six (6) months.
A3	341 I.P.C.	To pay a fine of Rs.500/-, in default to undergo simple imprisonment for one (1) months.
	302 r/w 34 I.P.C.	To undergo life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for six (6) months.

3. Challenging the conviction and sentence imposed by the Trial Court, the petitioners herein, namely, A2 and A3 have filed the above criminal appeal and during the pendency of the criminal appeal, they have filed the criminal miscellaneous petition for suspension of sentence.

4. The case of the prosecution is that the accused and the deceased are neighbours. On 05.04.2015, Meena, who is the wife of the second accused, had blocked the drainage, which was running in front of their house. Due to which, there was an altercation between the said Meena and one Subburaj, who is the father of the deceased. Then, on 06.04.2015, at 07.15 a.m., when the deceased along with his brother Nagaraj were proceeding to attend the nature's call, the accused were standing near Easwaran Temple and the accused 2 and 3 (petitioners herein) caught hold the deceased Chinnaian, while A1 caused stab injury and Chinnaian succumbed to the injury. It is further stated that the occurrence was witnessed by P.Ws.1, 2, 4, 7 and 8 and the accused were arrested on the same day at 15.30 hours and based on the confession statement of A1, M.Os.1 to 3 were recovered.

5. Mr.M.Ajmal Khan, learned Senior Counsel appearing for M/s.Ajmal Associates, learned counsel on record for the petitioners, would submit that there are vital contradictions in the evidence of eye-witnesses and the evidence of P.W.19 / Investigating Officer, which would prove that the prosecution case is false. It is further submitted that during the course of cross-examination, P.Ws.4 and 7 have themselves admitted that they went to the scene of occurrence only after hearing the noise and they could not have seen the occurrence and the Investigating Officer admits that P.W.8 is not an eye-witness.

6. It is the further submission of the learned Senior Counsel



that the earlier information given by P.W.1 has been suppressed and the F.I.R. (Ex.P9) was registered based on the second statement of P.W.1 and hence, the genesis of the case has been deliberately suppressed by the prosecution. According to the learned Senior Counsel, P.W.1 has deposed that A1 caused single injury on the deceased. But, the Post-Mortem Report (Ex.P8) and the evidence of Dr.Shanmuga Priya (P.W.14), who conducted post-mortem, would show that the deceased had sustained multiple injuries. But, in her cross-examination, P.W.14 has deposed that there was no possibility for the accused to sustain these injuries, if single blow is caused on the deceased. According to the learned Senior Counsel, medical evidence is not supporting the prosecution case.

7. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor, would submit that the prosecution has proved the case beyond reasonable doubts through the eye-witnesses, namely, P.W.1, 2, 4, 7 and 8, who are the natural witnesses and the motive was also spoken by P.W.1. According to the learned Additional Public Prosecutor, the accused were rightly convicted by the Trial Court on proper appreciation of evidence and they are not entitled for suspension of sentence.

8. In the instant case, the first information, namely, complaint was given by P.W.1. In the chief-examination, she would depose that after the occurrence, her husband was taken to the Hospital. But, during the course of cross-examination, she stated that after the occurrence, first she went to the Police Station along with her husband, from there they went to the Hospital. As per the prosecution case, the accused were arrested on 06.04.2015 at 15.30 hours and based on the confession statement of A1, M.Os.1 to 3 were recovered. But, P.W.1, in her cross-examination, has categorically admitted that when she went to the Police Station, all the three accused were present in the Police Station and she also saw M.O.1-Knife. This statement of P.W.1 would disprove the case of the prosecution that the accused were arrested at 15.30 hours in the presence of P.W.10 and in pursuance of the confession, M.O.1 was recovered. As rightly pointed out by the learned Senior Counsel, all the eye-witnesses are the close relatives of the deceased and according to the witnesses, A1 caused single blow on the deceased. But, the Post-Mortem Report (Ex.P8) and the evidence of P.W.14 would show that the deceased had sustained multiple injuries and his left ribs 2, 3 and 4 got fractured

9. Considering the above facts and also taking note of the overt act attributed to the petitioners, we are inclined to suspend the substantive sentence of imprisonment imposed on the petitioners. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment alone imposed on the petitioners herein is suspended, subject to the following conditions:



i. The petitioners are directed to be enlarged on bail on each of them 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, Uthamapalayam.

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 petitioners shall stay at Madurai and report before the Inspector of Police, Thallakulam Police Station, Madurai, daily at 10.00 a.m. until further orders.

iv. It is made clear that the petitioners shall not enter into the jurisdiction of the respondent Police.

sd/-
05/08/2020

/ TRUE COPY /

/08/2020
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 JUDGE, (FAST TRACK COURT), THENI.
2. THE JUDICIAL MAGISTRATE,
UTHAMAPALAYAM, THENI DISTRICT.
3. THE CHIEF JUDICIAL MAGISTRATE, THENI DISTRICT
4. THE INSPECTOR OF POLICE,
ODAIPATTI POLICE STATION, THENI DISTRICT.
5. THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
6. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO:

THE INSPECTOR OF POLICE,
THALLAKULAM POLICE STATION, MADURAI.

ORDER IN
CRL MP(MD) No.3492 of 2020 IN
CRL A(MD) No.495 of 2019
Date :05/08/2020

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<https://hccservices.courts.gov.in/hccservices>
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