



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Monday, the Fourteenth day of September Two Thousand and Twenty

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PRESENT

The Hon'ble Mr Justice K.KALYANASUNDARAM

and

The Hon'ble Mrs.Justice T.KRISHNAVALLI

CRL MP(MD) No.3695 of 2020

IN

CRL A(MD) No.476 of 2019

AMIRTHARAJ

... PETITIONER/ APPELLANT/
ACCUSED NO.2

Vs

THE STATE REP. BY
THE INSPECTOR OF POLICE,
TIRUCHULI POLICE STATION,
VIRUDHUNAGAR DISTRICT.
CRIME NO.220/2009

... 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/ Appellant/ Accused No.2 in S.C.No.9/2012 dated 01.04.2019 on the file of the learned Additional District and Sessions Judge, Virudhunagar and enlarge him on bail pending disposal of the appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.P.YASMIN BEGUM, 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 Amirtharaj along with one Irulan, Madurai Veeran and Bakkiaraj was tried before the learned Additional District and Sessions Court, Virudhunagar, in S.C.No.9 of 2012, for the offence under Sections 302 and 506(II) I.P.C. It appears that pending trial, Irulan (A1) died and the charges framed against him were abated. The Trial Court, vide Judgment dated 01.04.2019, found A2 to A4 guilty for the said offence. The conviction and sentence imposed on the petitioner (A2) is as follows:



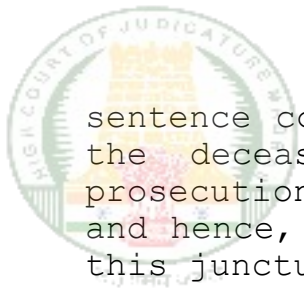
Section of Law	Sentence of imprisonment
302 I.P.C.	To undergo life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for three (3) months.
506(II) I.P.C.	To undergo two (2) years rigorous imprisonment.

2. Aggrieved over the conviction and sentence, the petitioner (A2) has preferred the present criminal appeal. Pending appeal, the petitioner (A2) has filed this criminal miscellaneous petition seeking to suspend substantive sentence of imprisonment imposed on him by the Trial Court in the above sessions case.

3. The case of the prosecution is that A1 is the father of A2 to A4. The deceased Marudhan is the brother of A1 and they had a land dispute. It is the further case of the prosecution that there was a dispute between them over taking water from a common bore-well. On 28.08.2009, at about 08.00 a.m., when the deceased was irrigating his groundnut crops, A1 armed with spade and A2 to A4 armed with Aruval attacked the deceased indiscriminately and caused his death. The prosecution projected P.Ws.1 and 2 as eye-witnesses to the occurrence. The Trial Court accepting the prosecution case convicted and sentenced the accused.

4. Ms.P.Yasmin Begum, learned counsel for the petitioner would submit that the entire prosecution case is false and the accused have been falsely implicated in this case. It is the further submission of the learned counsel that though the prosecution has stated that due to civil dispute the occurrence had taken place, P.W.1, in his cross-examination, has admitted that that there was a separate bore-well for the accused and the deceased parties and no civil suit was pending between them. It is further submitted that the marriage between P.Ws.1 and 2 is a love marriage and it was performed two days prior to the occurrence and it was not accepted by the family members of P.W.1 and hence, there was a quarrel. Therefore, P.Ws.1 and 2 would not have gone to the scene of occurrence. In this regard, the learned counsel has drawn the attention of this Court to the evidence of P.W.4. It is further submitted by the learned counsel that the Observation Mahazar (Ex.P4) would show that there was no blood stain in the place of occurrence and it was admitted by the Investigating Officer (P.W.9) in his cross-examination. According to the learned counsel, there are arguable points in favour of the petitioner and the appeal is not likely to be taken up for final hearing in the near future and prayed for suspension of sentence.

5. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor, would vehemently oppose the petition for suspension of



sentence contending that the motive between the accused parties and the deceased party has been categorically established by the prosecution and the occurrence was also witnessed by P.Ws.1 and 2 and hence, there is no need to show indulgence to the petitioner at this juncture and prayed to dismiss the petition.

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6. Heard the learned counsel on either side and perused the materials available on record.

7. In the matter on hand, as per the prosecution case, due to civil dispute between the accused parties and the deceased party, the occurrence was taken place on 28.08.2009. As rightly pointed out by the learned counsel for the petitioner, P.W.1, in his cross-examination, has admitted that there is a separate bore-well for the deceased and A1 and they have also laid separate pipelines to irrigate their fields. It is also admitted by P.W.1, in his cross-examination, that he married P.W.2 just two days prior to the occurrence and it was not accepted by his family members. Perusal of the Observation Mahazar (Ex.P4) also shows that there was no blood stain in the place of occurrence.

8. Considering the above facts and circumstances of the case, we are inclined to suspend the substantive sentence of imprisonment imposed on the petitioner (A2). Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment imposed on the petitioner (A2) alone is suspended, subject to the following conditions:

- i. The petitioner (A2) 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, Aruppukottai.
- 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 (A2) shall appear before the learned Judicial Magistrate, Aruppukkottai, 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/-
14/09/2020

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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,
VIRUDHUNAGAR.
2. THE JUDICIAL MAGISTRATE, ARUPPUKOTTAI.
3. -DO- THROUGH: THE CHIEF JUDICIAL MAGISTRATE,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.
4. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
5. THE INSPECTOR OF POLICE,
TIRUCHULI POLICE STATION,
VIRUDHUNAGAR DISTRICT.
6. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+2CC to M/s.P.YASMIN BEGUM, Advocate (SR-6428[I] dated 15/09/2020)

ORDER IN
CRL MP(MD) No.3695 of 2020 IN
CRL A(MD) No.476 of 2019
Date :14/09/2020

KRK
SRS/ PN/ SAR-IV/ 16.09.2020/ 4P/9C

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