



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

Wednesday, the Twenty Ninth day of July Two Thousand Twenty

PRESENT

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

CRL MP(MD) No.3618 of 2020

IN

CRL A(MD) No.159 of 2020

RAMESH @ KARIKATTAI

... PETITIONER/ APPELLANT

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
CHINNAMANUR POLICE STTION,
THENI DISTRICT.
CRIME NO.542 OF 2016

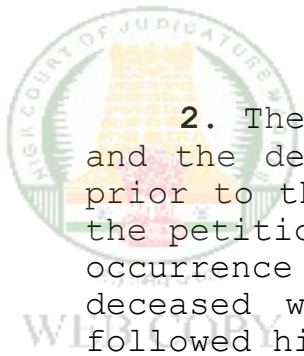
... RESPONDENT/ RESPONDENT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence passed in S.C.No.39 of 2017 dated 28/08/2018 on the file of the Learned Additional District Court(Fast Track Court), Theni.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.S.POORNACHANDRAN, 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 herein, who was charged for the offence under Section 302 I.P.C. simpliciter, was tried in S.C.No.39 of 2017, before the learned Additional District Judge, Fast Track Court, Theni and convicted for the said offence and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- (Rupees five thousand only), in default, to undergo six months simple imprisonment. Aggrieved over the said conviction and sentence, the petitioner has filed the above criminal appeal and pending appeal, he has filed this criminal miscellaneous petition seeking suspension of substantive sentence of imprisonment imposed on him as stated above.



2. The case of the prosecution is that the petitioner / accused and the deceased Sekar belonged to the same village and one month prior to the occurrence, the deceased made adverse comments against the petitioner and thereafter, it was repeated two days prior to the occurrence and hence, on 16.09.2016, at 06.00 a.m., when the deceased was proceeding near Kanniampatti Pirivu, the petitioner followed him and caused stab injuries on him and thereby, he died.

3. In order to prove the case of the prosecution, P.Ws.1 to 17 were examined and Exs.P1 to P15 and M.Os.1 to 13 were marked. On the side of the petitioner, no witness was examined and no document was marked. P.Ws.1 and 2 are said to have witnessed the occurrence. As stated supra, the Trial Court accepting the prosecution case, convicted the petitioner and sentenced him to undergo life imprisonment.

4. Mr.S.Poornachandran, learned counsel for the petitioner, would argue that the evidence of P.Ws.1 and 2 would establish that they would not have seen the occurrence and they have been planted to support the prosecution case. It is stated that there are contradictions in the evidence of P.Ws.1 and 2. According to the learned counsel for the petitioner, P.W.1 has deposed that when the deceased was sitting near Karuppasamy Temple, the petitioner is said to have attacked him on his chest and caused injuries. But, P.W.2 would depose that when the deceased was walking, the petitioner followed him and caused injuries. It is further stated that there was a delay of two hours in lodging the F.I.R. and the petitioner is in incarceration for more than two years and there are arguable points available to the petitioner.

5. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor, would submit that there is no contradiction in the evidence of P.Ws.1 and 2. According to the learned Additional Public Prosecutor, the occurrence had initially taken place near Karuppasamy Temple and when P.Ws.1 and 2 were witnessing the occurrence, the second incident had taken place. It is also stated that the evidence of P.W.14 would clearly establish the presence of the accused in the scene of occurrence, since he also sustained injuries in his hand.

6. Heard Mr.S.Poornachandran, learned counsel for the petitioner and Mr.R.Anandharaj, learned Additional Public Prosecutor for the respondent and perused the materials available on record.

7. In the matter on hand, the prosecution relies on the evidence of P.Ws.1 and 2, who are said to have seen the occurrence. As rightly pointed out by the learned counsel for the petitioner, both the witnesses have deposed that only after hearing the noise, they saw the deceased, who sustained injuries and the petitioner running away from the scene of occurrence. Further, P.Ws.1 and 2



have not spoken about the injuries sustained by the petitioner. The petitioner is in incarceration for more than two years and the appeal is not likely to be taken up for hearing in the near future.

8. 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 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 petitioner shall appear before the learned Judicial Magistrate, Uthamapalayam, 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/-
29/07/2020

/ 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 ADDITIONAL DISTRICT JUDGE,
(FAST TRACK COURT), THENI.
2. THE JUDICIAL MAGISTRATE, UTHAMAPALAYAM.
3. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THENI DISTRICT.
4. THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
5. THE INSPECTOR OF POLICE
CHINNAMANUR POLICE STTION, THENI DISTRICT.
6. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP (MD) No.3618 of 2020
IN
CRL A (MD) No.159 of 2020
Date :29/07/2020

MS/VR/SAR-2/31.07.2020/4P.7C