



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

Thursday, the Eighth day of October Two Thousand Twenty

PRESENT

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

CRL MP(MD) No.4151 of 2020
IN
CRL A(MD) No.13 of 2019

M.VENKATACHALAM @ VENKIDU

... PETITIONER/ APPELLANT

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
ADIVARAM POLICE STATION,
PALANI, DIDNIGUL DISTRICT.

... 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 imposed by the learned Additional District and Sessions Judge, Dindigul in S.C.No.136/2011 dated 21/12/2018 and to enlarge the appellant on bail in connection with S.C.No.136/2011 on the file of the learned Additional District and Sessions Judge, Dindigul.

PRAYER IN CRL A(MD) No.13 of 2019:

To set aside the judgment of conviction and sentence dated 21.12.2018 made in S.C.No.136 of 2011 on the file of the Learned Additional District Sessions Judge, Dindigul and allow this Appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.N.DILIP KUMAR, 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.**]

Heard Mr.N.Dilipkumar, learned counsel appearing for the Petitioner and Mr.R.Anandharaj, learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.



2.This Criminal Appeal is preferred by the convicted accused in S.C.No.136 of 2011, on the file of the Additional District and Sessions Judge, Dindigul for the charge under Section 302 of IPC.

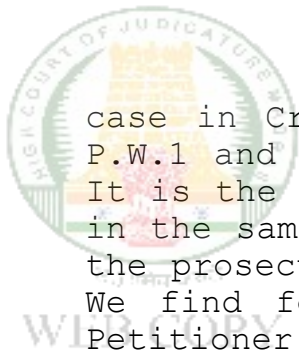
3.The case of the prosecution is that on 7.5.2010 at about 5.00 p.m., an employee of P.W.1 one Kannan was taking water through the tri-cycle. Finding that he is not providing way to the second accused who was driving his auto, had slapped him. The deceased Krishnan @ Krishnamoorthy questioned the second accused for assaulting the said Kannan, for which, at 10.45 p.m., both the accused came to the hotel of P.W.1 and the first accused had attacked the deceased with aruval, while the second accused had attacked the deceased with wooden log and due to the injuries sustained in the said occurrence, the deceased died on 11.5.2020.

4.Though the charge-Sheet was laid against two accused under Section 302 IPC, pending trial, the second accused died and hence the charge against him stands abated. Aggrieved over the conviction and sentence, the first accused has come up with this Criminal Appeal. Pending appeal, he seeks suspension of sentence.

5.The learned counsel for the Petitioner would argue that the prosecution did not come to the Court with clean hands and the counter registered against the deceased and P.W.1 was deliberately suppressed by the prosecution in this case. It is next contended that the deceased was a drunkard and he picked up quarrel with the accused and they were assaulted and thereafter he fell down in the drainage and sustained injuries, for which, the accused have been falsely roped in this case. It is further submitted that the prosecution witnesses themselves have admitted that immediately after the occurrence, the Police came to the scene of crime, but, the case was registered with a delay of three hours and the delay in lodging the complaint was not properly explained. Further, the material objects have been recovered only on the basis of the confession of A2 and that cannot be put against the first accused.

6.Per contra, the learned Additional Public Prosecutor appearing for the respondent vehemently opposed the application contradicting that the prosecution though P.Ws 1 to 6 and 9, who have witnessed the occurrence, has categorically and cogently proved before the trial Court with regard to the complicity of the accused and there is no reason to disbelieve their evidence. According to the learned Additional Public Prosecutor, the guilt against the accused have been proved beyond reasonable doubt and prays for the dismissal of this application.

7.In the matter on hand, it is the case of the prosecution that on 17.5.2010 at about 10.45 p.m., the accused 1 and 2 came to the hotel of P.W.1 and attacked the deceased with M.Os.1 and 2, for which, a criminal case was registered in Crime No.326 of 2010. The



case in Crime No.327 of 2010 was registered against the deceased, P.W.1 and P.W.4 for the offence under Sections 324 and 307 of IPC. It is the submission of the learned counsel for the Petitioner that in the same transaction, the accused in this case were assaulted by the prosecution party which has been suppressed by the prosecution. We find force in the contention of the learned counsel for the Petitioner. It is also relevant to note that though the occurrence had taken place on 7.5.2010, however, the deceased died on 11.5.2010, there is no material available on record to show that he was in the state of Coma and no explanation was offered by the prosecution for not obtaining the statement from the deceased. It is also informed that the accused is having arguable points in the appeal and further, the appeal is also not likely to be taken up for hearing in the near future.

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 his 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, Palani, Dindigul District.

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.

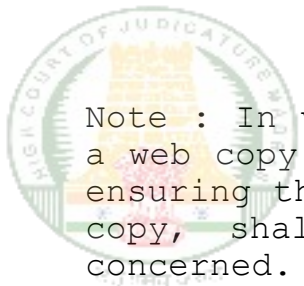
iii. The petitioner shall appear before the learned Judicial Magistrate, Palani, Dindigul District at 10.30 a.m. on the first working day of every English Calendar month until further orders.

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/-
08/10/2020

/ 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.

WEB COPY

1 THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
DINDIGUL

2 THE JUDICIAL MAGISTRATE, PALANI,
DINDIGUL DISTRICT.

3 DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
DINDIGUL DISTRICT.

4 THE INSPECTOR OF POLICE,
ADIVARAM POLICE STATION, PALANI,
DINDIGUL DISTRICT.

5 THE SUPERINTENDENT, CENTRAL PRISON,
MADURAI.

6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-6890[I] dated 09/10/2020)

ORDER
IN
CRL MP(MD) No.4151 of 2020
IN
CRL A(MD) No.13 of 2019
Date :08/10/2020

MS/VR/SAR-3/13.10.2020/4P.8C