



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

Thursday, the Twenty Sixth day of November Two Thousand and Twenty

PRESENT

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

CRL MP(MD) No.3937 of 2020  
IN CRL A(MD) No.247 of 2020

1 SARAVANAN  
2 SATHEESH  
3 SANKARMANI

... APPELLANTS/ ACCUSED NO.1,4 & 5  
- Vs-

STATE REP.BY  
THE INSPECTOR OF POLICE  
LALPETTAI POLICE STATION,  
KARUR DISTRICT.  
CRIME NO.359/2017

... RESPONDENT/ COMPLAINANT

Petition filed 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 Learned Sessions Judge /Fast Track Mahila Court, Karur in S.C.No.35 of 2018 dated 02/07/2020 and enlarge the Appellants /Accused No.1,4 and 5 on bail pending disposal of the above Said criminal appeal.

**PRAYER IN CRL A(MD) No.247 of 2020:**

To call for the records and set aside the sentence and conviction imposed in S.C.No.35 of 2018 on the file of the learned Additional Sessions Judge/ Fast Track Mahila Court, Karur vide judgment dated 02.07.2020.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.S.M.A.JINNAH, 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 petitioners / appellants herein were arrayed as A1, A4 and A5 in S.C.No.35 of 2018, on the file of the Additional Sessions Court / Fast Track Mahila Court, Karur. They were charged under Sections 294(b), 323, 325, 302, 302 r/w 109, 149 r/w 294(b), 149 r/w 323, 149 r/w 325, 149 r/w 294(b) and 149 r/w 302 I.P.C.



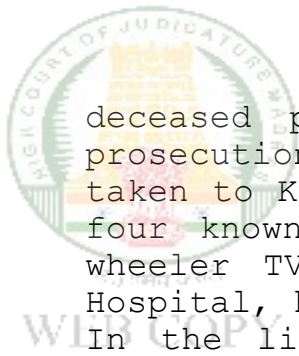
2. Though the respondent Police laid charge sheet against five accused, the learned Trial Judge acquitted A2 and A3 from all the charges framed against them and convicted and sentenced the petitioners / appellants herein including life imprisonment. Challenging the said finding, the present appeal has been filed.

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3. The case of the prosecution is that A1, A4 and A5 are brothers. A2 is the wife of A1 and A3 is the relative of A1. According to the prosecution, there exists a land dispute between the accused party and the deceased party. While so, on 19.10.2017, at 10.00 a.m., A1 - Saravanan went in front of the house of P.W.1 - Sumathi and scolded her by using filthy language. When it was questioned by P.W.1, she was assaulted by the accused 1 to 5. On hearing the alarm of P.W.1, P.W.3 - Sakthivel came there and questioned the accused, while so, he was also attacked by the accused. Thereafter, P.Ws.1 and 3 were taken to the Government Hospital, Kulithalai. Subsequently, at 10.15 a.m. on the same day, the deceased Perumal, who is the younger brother of P.W.1 came to the place of occurrence and questioned the act of accused for the incident, which took place at 10.00 a.m. At that time, A2 - Minnalkodi abused the prosecution witness and on seeing this, A1 took TVS XL Super two wheeler and hit against the deceased and as a result, he fell down. Thereafter, A4 - Satheesh caught hold of the hands and A5 - Sankarmani caught hold of the legs of the deceased, while A1 ran over his two wheeler repeatedly on the stomach of the deceased and thereby, he sustained injuries and eventually, he succumbed to the injuries on 04.11.2017.

4. The prosecution, in order to prove the charges, examined P.Ws.1 to 6 as eyewitnesses to the incident, which took place on 10.00 a.m. and 10.15 a.m. on 19.10.2017. The learned Trial Judge accepting the prosecution case convicted A1, A4 and A5, while acquitting A2 and A3 from the charges framed against them.

5. Mr.S.M.A.Jinna, learned counsel appearing for the petitioners, would argue that the prosecution has not come to the Court with clean hands and the genesis of the case has been suppressed by the prosecution. He would further add that though the occurrence had taken place on 19.10.2017 and P.Ws.1 and 3 are said to have sustained injuries and the deceased died on 04.11.2017, admittedly, the complaint (Ex.P1) was given only after a lapse of three days i.e. on 21.10.2017. It is further contended that admittedly the deceased survived for fifteen days after the incident, however no statement was recorded from him for the reasons best known to the prosecution. It is further submitted that in the course of the same incident, A4 and A5 have sustained injuries, for which a counter case was registered in Crime No.358 of 2017, but no investigation was carried out on the counter complaint and no material was produced before the Trial Court for consideration. It is also contended that P.Ws.1 to 6 are close relatives of the

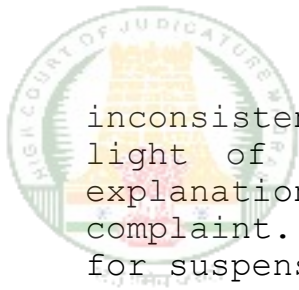


deceased party and no independent witness was examined by the prosecution. According to the learned counsel, when deceased was taken to Kulithalai Hospital, he has stated that he was attacked by four known persons, but he never said that he was hit by a two wheeler TVS XL Super and when the deceased was taken to Trichy Hospital, he has stated that he was attacked by three known persons. In the light of these contradictions, it is submitted that the petitioners / appellants are entitled for suspension of sentence pending appeal.

6. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor appearing for the respondent, would argue that admittedly, there was a land dispute pending between the accused party and the deceased party and the accused are neighbours of the deceased. It is further contended that A1 is the root cause for the incident, who first scolded P.W.1 by using filthy language and therefore, no indulgence can be shown to the accused. It is also contended that when the illegal act of the accused was questioned by the deceased, he was done to death by the accused and the delay in lodging the complaint is only due to the reason that the injured witnesses were taken to different hospitals for better treatment. According to the learned Additional Public Prosecutor, the witnesses were originally admitted in Kulithalai Hospital, from there, they were shifted to Karur Hospital, thereafter Trichy Hospital and the delay in lodging the complaint has been properly explained by the prosecution.

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

8. In the instant case, according to the prosecution, both the accused party and the deceased party are neighbours and they had a land dispute. On 19.10.2017, A1 is said to have gone to the house of P.W.1 and hurled filthy abuses to her. When it was protested, P.Ws.1 and 3 are said to have been attacked by the accused at 10.00 a.m., and when this was questioned by the deceased Perumal, he was assaulted by the accused and A1 with two wheeler repeatedly ran over the stomach of the deceased, which resulted in his death on 04.11.2017. Admittedly, for the occurrence, which took place on 19.10.2017, a complaint was lodged to P.W.20 on 21.10.2017. It is not the case of the prosecution that all the eyewitnesses have sustained grievous injuries and they could not make a complaint to the Police. In fact, the witnesses P.Ws.1 to 3 and the deceased were originally admitted in Kulithalai Hospital and thereafter, referred to Karur Hospital, where from intimations were sent to the respondent Police, but no complaint was received from the prosecution party. It is not disputed that the deceased Perumal died only on 04.11.2017, but no explanation is forthcoming for not recording statement from him. The entries in Exs.P12 and P13 - Accident Registers relating to the deceased would show that



inconsistent statements were given by the deceased himself. In the light of the above facts, we find it difficult to accept the explanation offered by the prosecution for the delay in lodging the complaint. So, in our considered view, the petitioners are entitled for suspension of sentence as sought for in this petition.

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9. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment imposed on the petitioners (A1, A4 and A5) is suspended, subject to the following conditions:

i. The petitioners (A1, A4 and A5) 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 No.I, Kulithalai.

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 (A1, A4 and A5) shall appear before the learned Judicial Magistrate No.I, Kulithalai, 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 them 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/-  
26/11/2020

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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



TO

1. THE ADDITIONAL SESSIONS JUDGE /  
FAST TRACK MAHILA COURT, KARUR.
2. THE JUDICIAL MAGISTRATE NO.I,  
KULITHALAI.
3. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,  
KARUR DISTRICT.
4. THE SUPERINTENDENT, CENTRAL PRISON,  
TRICHY.
5. THE INSPECTOR OF POLICE  
LALPETTAI POLICE STATION,  
KARUR DISTRICT.
6. THE ADDITIONAL PUBLIC PROSECUTOR,  
MADURAI BENCH OF MADRAS HIGH COURT,  
MADURAI.

ORDER  
IN  
CRL MP (MD) No.3937 of 2020  
IN  
CRL A (MD) No.247 of 2020  
Date :26/11/2020

MS/PN/SAR-4/04.12.2020/5P.7C