



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

Tuesday, the First day of September Two Thousand Twenty

PRESENT

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

CRL MP(MD) No.3927 of 2020

IN

CRL A(MD) No.336 of 2019

MUTHUPANDI

... PETITIONER/ APPELLANT

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
AVANIYAPURAM POLICE STATION,
MADURAI CIRTY, MADURAI 625 012.
CRIME NO.65 OF 2012

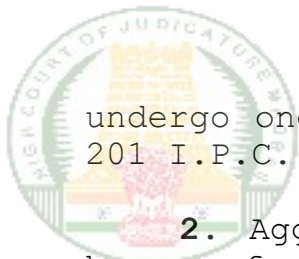
... RESPONDENT/ RESPONDENT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to enlarge the petitioner on bail by suspending the sentence imposed on the petitioner by the IV Additional District and Sessions Judge, Madurai in S.C.No.239 of 2014, dated 23.11.2018, pending disposal of the above Criminal Appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.G.KARUPPASAMY PANDIYAN, 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 along with one Thangam @ Thangaselvi were charged by the learned IV Additional District and Sessions Judge, Madurai, in S.C.No.239 of 2014, for the offence under Sections 302 and 201 I.P.C. The learned Sessions Judge, by Judgment dated 23.11.2018, acquitted A2 from the said charges and convicted and sentenced the petitioner (A1) to undergo life imprisonment and to pay a fine of Rs.3,000/- (Rupees three thousand only), in default to undergo two months simple imprisonment for the offence under Section 302 I.P.C. and to undergo one year rigorous imprisonment and to pay a fine of Rs.2,000/- (Rupees two thousand only), in default to



undergo one month simple imprisonment for the offence under Section 201 I.P.C.

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

3. The case of the prosecution is that the deceased Kanaga is the wife of the petitioner (A1) and they belonged to Boothipuram Village near Ayyankovilpatti. Whiles, the petitioner had gone to Panayur to work in a brick-kiln, where he developed intimacy with Thangam @ Thangaselvi (A2). When it came to the knowledge of the deceased, she had gone to Panayur on 04.02.2012 and picked up quarrel with both the accused. It is further alleged that in order to continue their relationship, A1 and A2 decided to kill the deceased and in pursuance thereof, on 05.02.2012 at 02.30 a.m. the petitioner punched on the neck of the deceased and caused death. Later, in order to conceal the evidence, both the accused buried the body.

4. Mr.G.Karuppasamy Pandian, learned counsel for the petitioner, would argue that the entire prosecution case revolves upon the circumstantial evidence. It is further contended that the Trial Court disbelieved the motive alleged by the prosecution and acquitted A2 from the charges framed against her. So, one of the chain of events has been snapped. According to the learned counsel, the extra-judicial confession of the petitioner given before the Village Administrative Officer (P.W.6) on 06.02.2012 and the recovery of the body are totally unbelievable for the reason that P.Ws.1 and 4 have deposed that they saw the petitioner in the Police Station and the place of occurrence on 05.02.2012 itself. It is also submitted that according to the prosecution, the petitioner attacked the deceased with his hand on her neck, thereby he caused only one injury. However, P.W.8, the Doctor, who conducted postmortem, deposed that the deceased had sustained several injuries. Further, the petitioner is in incarceration for more than two years and the petition for suspension of sentence may be considered as the appeal is not likely to be taken up for hearing in the near future.

5. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor, would submit that P.Ws.2 and 3, who are independent witnesses, have deposed that they saw the petitioner along with the deceased on 05.02.2012 and they were also witnesses for recovery of the body. So, the onus rests upon the petitioner to prove how the deceased died, but, he has not discharged his burden and hence, prayed for dismissal of the miscellaneous petition.



6. Heard the rival submissions and perused the materials available on record.

7. In the matter on hand, admittedly, there is no eye-witness to the occurrence. As rightly pointed out by the learned counsel for the petitioner, the Trial Court disbelieved the motive alleged by the prosecution and acquitted A2 from the charges framed against her. P.W.1, mother of the deceased, deposed that she saw the petitioner on 05.02.2012 in the Police Station, whereas P.W.4 has deposed that the petitioner was present in the scene of occurrence on 05.02.2012.

8. Considering the above facts and circumstances of the case, we are inclined to suspend the substantive sentence of imprisonment imposed on the petitioner. 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 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.VI, Madurai.

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.

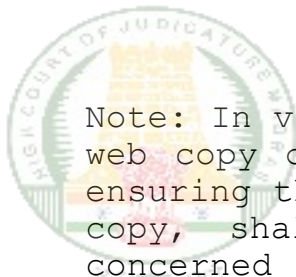
iii. The petitioner shall appear before the learned Judicial Magistrate No.VI, Madurai, at 10.30 a.m. on the first working day of every English Calendar month until further orders.

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/-
01/09/2020

/ 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

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TO

1. THE IV ADDITIONAL DISTRICT AND SESSIONS JUDGE,
MADURAI.

2. THE JUDICIAL MAGISTRATE NO.VI, MADURAI.

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

4. THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

5. THE INSPECTOR OF POLICE
AVANIYAPURAM POLICE STATION, MADURAI CIRTY,
MADURAI 625 012.

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

+1 CC to M/s.G.KARUPPASAMY PANDIYAN, Advocate (SR-6188[I] dated
01/09/2020)

ORDER

IN

CRL MP(MD) No.3927 of 2020

IN

CRL A(MD) No.336 of 2019

Date :01/09/2020

MS/VR/SAR-1/07.09.2020/4P.8C