



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

Wednesday, the Seventh 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.3992 of 2020

IN

CRL A(MD) No.48 of 2020

1.NELLAIYAPPAN

2.BATHIRAKALI

... PETITIONERS/APPELLANTS

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE,
THATTAPPARAI POLICE STATION,
THOOTHUKUDI DISTRICT.
CRIME NO.67/2016

... RESPONDENT/RESPONDENT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to enlarge the petitioner on bail by Suspending the Sentence imposed upon the petitioners in S.C No.106 of 2017 on the file of the Learned I Additional District and Sessions Judge, Thoothukudi, Thoothukudi District, by Judgment dated 11.11.2019 pending disposal of the main Criminal Appeal.

PRAYER IN CRL A(MD) No.48 of 2020:

Pleased to call for the records in S.C.No.106 of 2017 on the file of the Learned I Additional District and Sessions Judge, Thoothukudi, Thoothukudi District, and set aside the Judgment dated 11.11.2019 and Acquit the Accused/Appellants of the Charges.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.A.THIRUVADI KUMAR, Advocate for the petitioners and of Mr.M.CHANDRASEKARAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

[Order of the Court was made by K.KALYANASUNDARAM, J.]

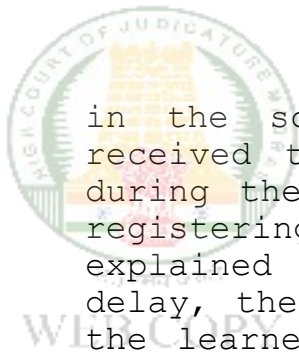
The convicted accused in S.C.No.106 of 2017, on the file of the I Additional District and Sessions Judge, Thoothukudi, Thoothukudi District have preferred the appeal. Pending appeal, they filed this miscellaneous petition for suspension of sentence.



2.The case of the prosecution is that the accused Nos.1 and 2 are the husband and wife and the third accused is their son-in-law. Since the fourth accused, who is the son of A1 and A2, was juvenile, the case against him was split up. P.W.5, Muthukumar married the daughter of accused Nos.1 and 2 and they were living together only for a short period of 7 months and thereafter, due to matrimonial dispute, they were living separately. It is the further case of the prosecution that the said Muthukumar is having a Tractor and he ploughed the land of the first accused, for which, A1 is liable to pay a sum of Rs.21,000/- to P.W.5. The further case of the prosecution is that on 14.07.2016 at about 03.30 p.m, when the deceased Muthulakshmi and her sister Ammal (P.W.2) were in the bus stop, they informed the third accused for non-payment of the amount of Rs.21,000/- by the first accused. When that matter was informed to the accused, at about 05.30 p.m on 14.07.2016, the accused rushed to the house of the deceased and when she was taking water from a public tap, the first accused attacked the deceased with handle of Aruval, while the other accused attacked the deceased as well as P.W.1 and P.W.2 with casuarina stick. It is stated that the deceased died on 15.07.2016.

3.Mr.A.Thiruvadikumar, learned counsel for the petitioners would argue that though the occurrence had taken place at 05.30 p.m on 14.07.2016, admittedly, the first information was given to the police only on 15.07.2016 at about 08.30 p.m and the delay in lodging the complaint was not properly explained by the prosecution. It is further contended that the First Information Report reached the Court only at 02.30 p.m and there is an alternation in the First Information Report, which has been admitted by P.W.13 that the time was altered from 09.30 p.m to 2.30 p.m. Therefore, according to the learned counsel for the petitioner, the First Information Report reached the Court at 09.30 p.m, but it was altered, as if, it reached the Court after 2.30 p.m. Adding further, the learned counsel for the petitioner would state that P.W.6 has admitted in his evidence that on the same date of occurrence i.e., on 14.07.2016 at 11.00 p.m, the police visited the scene of occurrence and also obtained statements, but those statements obtained from the witnesses have been deliberately suppressed by the prosecution. It is also contended that the injury sustained by the accused has not been properly explained by the prosecution. Hence, the learned counsel prays for suspension of sentence.

4. Per contra, Mr.M.Chandrasekaran, learned Additional Public Prosecutor, would vehemently oppose the application by contending that in this case, there are totally five eye-witnesses and they have categorically and consistently deposed the involvement of the accused in this case and out of 5, P.W.1 and P.W.2 are injured eyewitnesses and there is no reason to discard their evidence. The learned Additional Public Prosecutor further contended that the injury sustained by the first accused would prove their presence



in the scene occurrence and the Sub-Inspector of Police, who received the complaint and registered the case, has passed away during the pendency of the investigation and hence, the delay in registering the First Information Report, that has been properly explained by the prosecution and therefore, on the ground of mere delay, the prosecution case need not be disbelieved. According to the learned Additional Public Prosecutor, the petitioners are not entitled for suspension of sentence during the pendency of the appeal.

5. In the case on hand, it is not in dispute that P.W.5 Muthukumar married the daughter of the accused Nos.1 and 2, namely, Lakshmi and they lived for short period and thereafter, they started living separately. The evidence adduced by the prosecution would show that when the deceased questioned the third accused about the non-payment of Rs.21,000/- by A1 the occurrence had taken place. It is also noticed that though the first accused was having aruval, but admittedly, he used only the handle portion to attack the deceased, which shows the accused has no intention to commit the murder. As rightly pointed out by the learned counsel for the petitioner, there was delay in lodging the First Information Report and reaching the First Information Report to the Court. That apart, P.W.6 during the cross examination admitted that the police visited the place of occurrence at 11.00 p.m on 14.07.2016, but according to the prosecution, the complaint was given on 15.07.2016 at 08.30 p.m.

6. Considering the above facts and circumstances of the case, we are inclined to suspend the substantive sentence of imprisonment imposed on the petitioners. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment imposed on them alone is suspended, subject to the following conditions:-

i. The petitioners 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 Judicial Magistrate No.I, Thoothukudi.

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 pass book to ensure their identity.

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

