



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

Friday, the Eighteenth 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.4000 of 2020
IN
CRL A(MD) No.255 of 2020

AZHAGU PANDI

... PETITIONER/APPELLANT

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
THIRUPPACHETHI POLICE STATION,
SIVAGANGAI DISTRICT,
CRIME NO.124 OF 2020

... 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 of imprisonment alone in S.C.No.105 of 2012 dated 27.02.2020 on the file of the learned Principal Sessions Judge, Sivagangai and enlarge the petitioner/Accused No.5 on bail, till the disposal of the Criminal Appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of MR.P.PALSELVAM, Advocate for the petitioner and of MR.R.ANANDARAJ, 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 has been arrayed as accused No.5 in the Sessions Case No.105 of 2012, on the file of the Principal Sessions Court, Sivagangai.

2. There were totally 18 accused as per the charge sheet. It is stated that during the pendency of trial, two accused passed away and the other 16 accused were tried and convicted for the offence committed by them. The conviction and sentence imposed on the petitioner herein are as follows:

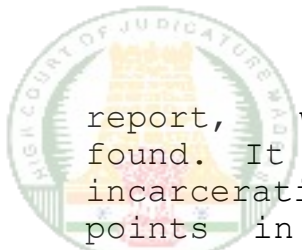


Accused	Section of Law	Sentence of imprisonment
A5	147 I.P.C.	To undergo rigorous imprisonment for two years years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for three (3) months.
	302 r/w 149 I.P.C.	To undergo life imprisonment and to pay a fine of Rs.2,000/-, in default to undergo rigorous imprisonment for three (3) months.
	326 r/w 149 I.P.C. (2 counts)	To undergo rigorous imprisonment for three (3) years and to pay a fine of Rs.1,000/- , in default to undergo rigorous imprisonment for three (3) months, for each count.
	324 r/w 149 I.P.C. (2 counts)	To undergo rigorous imprisonment for three (3) years and to pay a fine of Rs.1,000/- , in default to undergo rigorous imprisonment for three (3) months, for each count.

3. Challenging the conviction and sentence imposed by the learned Sessions Judge, the petitioner herein, namely, A5 has filed the above criminal appeal and during the pendency of the criminal appeal, the Petitioner has filed the criminal miscellaneous petition for suspension of sentence.

4. The case of the prosecution is that it is an usual practice of the people from Mudukulathur and Kadaladi to bring their goats and make them to stay in the agricultural fields of Kachanatham Village in Sivagangai District. In regard to the stay of goats, there was a dispute between the deceased and one Muniyandi (A4). On 30.08.2020, at 10.00 a.m. Chandrakumar (P.W.1) went to A4's house to enquire about the issue, where wordy quarrel arose between them. On the same day at 02.30 p.m., it is stated that when the witnesses Chandrakumar (P.W.1), his brother Sureshkumar (P.W.2), Pandi (P.W.3) and Mathi @ Mathiyalagan (P.W.4) were discussing the issue, the accused came with aruval and attacked the deceased with deadly weapons. In the course of the occurrence, some of the witnesses have also sustained injuries and one Allimuthu died.

5. Mr. P. Pal Selvam, learned counsel for the Petitioner would submit that according to the prosecution case, the Petitioner, who was arrived as A5 caused injury on the buttocks of the deceased. Even though P., W.1 to P.W.3 were projected as eyewitnesses to the occurrence and they supported the case of the prosecution, P.W.16- Dr. Rajarajan, who conducted the post-mortem issued the post-mortem



report, wherein, no corresponding injury on the buttocks was found. It is further stated that the Petitioner has been under incarceration for the past one year and that there are arguable points in favour of the Petitioner. It is also submitted that there is no likelihood of taking up the appeal for final hearing in the near future and prays for allowing this application. It is also stated by the learned counsel for the Petitioner that in respect of the co accused who have caused injuries on witnesses, this Court has granted suspension of sentence.

6. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor, would submit that the evidence of eyewitness P.W.1 to P.W.3 are cogent and natural. The charges against the accused have been proved by the prosecution beyond reasonable doubt during trial and hence prayed for dismissal of the application.

7. Considering the overtact attributed against the Petitioner and after perusing the evidence of P.W.1 to P.W.3 and P.W.16 and the post-mortem Certificate, 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 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 learned Judicial Magistrate, Manamadurai.

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 stay at Madurai and appear before the learned Judicial Magistrate, Manamadurai, at 10.30 a.m. on the first working day of every English Calendar month until further orders.

iv. It is made clear that the petitioner shall not enter into the jurisdiction of the respondent Police.

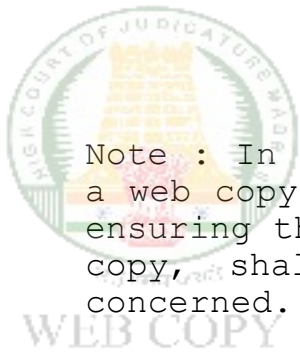
v. On any particular date, if the petitioner is not able to appear, leave is granted to the petitioner to file application under Section 317 Cr.P.C. and appear before the Committal Court on any other day, as determined by the Committal Court, in lieu of the day on which they would absent.

sd/-
18/09/2020

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/ /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 PRINCIPAL SESSIONS JUDGE,
SIVAGANGAI.
- 2 THE JUDICIAL MAGISTRATE,
MANAMADURAI.
- 3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
SIVAGANGAI.
- 4 THE INSPECTOR OF POLICE,
THIRUPPACHETHI POLICE STATION,
SIVAGANGAI DISTRICT.
- 5 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP (MD) No.4000 of 2020
IN
CRL A (MD) No.255 of 2020
Date :18/09/2020

VSN
JM/VR/SAR I/23.09.2020/4P/7C