



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

Tuesday, the Thirteenth 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.4093 of 2020
IN
CRL A(MD) No.267 of 2020

MURUGAN

... PETITIONER/APPELLANT/ACCUSED No.7

Vs

STATE REPRESENTED BY
THE INSPECTOR OF POLICE,
RAJATHANI POLICE STATION,
THENI DISTRICT.
IN CRIME No.16/2017

... RESPONDENT/RESPONDENT/COMPLAINANT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence imposed the petitioner/appellant/accused No.7 in S.C.No.166 of 2017 dated 03.03.2020 on the file of the learned Additional District and Sessions Judge, (Fast Track) Theni and enlarge him on bail till the disposal of the appeal.

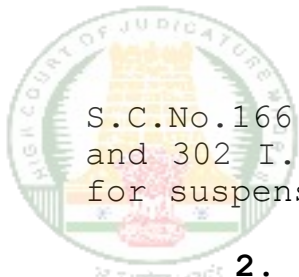
Prayer in CRL A(MD) No.267 of 2020:

To call for the records relating to the judgment passed in S.C.No.166/2017 on 03.03.2020 the learned Additional District and Sessions Judge (Fast Track Court), Theni and set-aside the same and acquit the appellant/accused No.7 from all the charges leveled against him.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.R.VENKATESWARAN, 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 (A7), who was convicted by the learned Additional District and Sessions Judge (FTC), Theni District, in
<https://hcservices.ecourts.gov.in/hcservices/>



S.C.No.166 of 2017, for the offence punishable under Sections 147 and 302 I.P.C. has preferred this appeal. Pending appeal, he seeks for suspension of sentence.

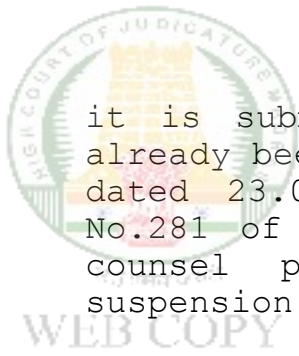
2. The case of the prosecution is that on 15.01.2017, i.e., on the day of Mattu Pongal, Reckla Race was conducted in the village of Theppampatti, where, dispute arose between the deceased and the accused party. Thereafter, all the accused armed with stones, sticks and wooden logs had gone to the house of the deceased at 08.30 p.m. and scolded and they were pacified and thereafter, at 09.30 p.m, when the deceased had gone to a shop to fetch Beedi, he was brutally attacked by the accused party and thereby, the deceased died on the spot.

3. In order to prove the prosecution case, P.W.1 to P.W.23 were examined and Exs.P1 to P25 and M.O.1 to M.O.6 were marked. The Trial Court, on the basis of the evidence adduced by the prosecution, convicted the accused A1, A2 and A7 to A9, while acquitting the remaining accused A3 to A6 and A10.

4. Mr.R.Venkateswaran, learned counsel for the petitioner, would submit that in the First Information Report, it is stated that 11 named accused and others have caused injuries on the deceased, but charge sheet was laid only against 10 accused persons. The Trial Court, has not totally believed and relied upon the evidence of eye-witnesses P.W.1 to P.W.6, but, applying the Masalti's Rule convicted the accused. It is further submitted that the names of P.Ws.3 and 6 have not been found place in the First Information Report and the entire evidence of the alleged eyewitnesses are very vague and they did not speak about the overt-acts attributed against the accused. He drew the attention of this Court to the evidence of P.Ws 1 to 3 to substantiate the said contention.

5. It is further urged by the learned counsel that the post-mortem Doctor P.W.17 found the deceased consumed alcohol and the injuries noted at the time of post-mortem did not tally with the evidence of the ocular witnesses. He further added that though the occurrence had taken place on 15.01.2017 at 09.30 p.m., and the case came to be registered at 23.30 hours, but the express F.I.R. reached the Court only on 16.01.2017 at 11.05 a.m. Further, it is submitted that admittedly, the occurrence had taken place during the night hours, but, no witnesses speak about the availability of the light in the place of occurrence and on the contrary, the staff from the Electricity Board, who was examined as P.W.15 also did not support the case of the prosecution

6. It is further submitted by the learned counsel that even though in the charge sheet it is alleged that the petitioner (A7) and A8 to A10 caught hold of the deceased, there is no evidence with regard to the overt act attributed to the petitioner (A7). Further,



it is submitted that A9, who is also on the same footing, has already been granted suspension of sentence by this Court vide order dated 23.09.2020 in Crl.M.P.(MD) No.4394 of 2020 in Crl.A.(MD) No.281 of 2020 and in the light of the above facts, the learned counsel prays for allowing the application filed seeking suspension of sentence.

7. Per contra, Mr.R.Anandhraj, learned Additional Public Prosecutor would submit that P.W.1 to P.W.3 and P.W.6 have categorically deposed before the Trial Court with regard to the dispute ensued between the parties on the date of Pongal Festival and the attack made by the accused on the deceased. He further submitted that P.W.20 in his chief-examination itself, has explained the reason for delay in reaching the First Information Report to the Court. According to the learned Additional Public Prosecutor, the Post-mortem Doctor P.W.17 has clearly stated that the death was due to the attack made by the accused with stones and sticks. It is the contention of the learned Additional Public Prosecutor that P.Ws 1 to 3 have clearly spoken about the overt act against the accused.

8. In the matter on hand, a perusal of the First Information Report would show that the criminal case in Crime No.16 of 2017 was registered on the file of the respondent Police, in which, it has been clearly stated that the offence was committed by 11 named accused and other accused. However, the final report was laid only against 10 accused persons. The Trial Court, after considering the evidence produced by the prosecution, disbelieved the story of recovery of weapons in pursuance of the confession made by the accused persons. Indisputably, the names of P.W.3 and P.W.6, who were said to have witnessed the crime, are not mentioned in the First Information Report. It is further seen that the evidence of P.W.1 to P.W.3 and P.W.6 are vague and there is no reference about the overt-acts against each of the accused, neither in the First Information Report nor in their evidence. Further, this Court, vide order dated 23.09.2020 in Crl.M.P.(MD) No.4394 of 2020 in Crl.A.(MD) No.281 of 2020, has suspended the sentence imposed on the co-accused, namely, A9.

9. In the light of the above facts, we are of the opinion that the petitioner (A7) 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 (A7) 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, Aundipatty.



- 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 Aundipatty, 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/-
13/10/2020

/ TRUE COPY /

/ /2020

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1.THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, (FTC),
THENI DISTRICT.
- 2.THE JUDICIAL MAGISTRATE, AUNDIPATTY.
- 3.DO THRO'THE CHIEF JUDICIAL MAGISTRATE, THENI DISTRICT.
- 4.THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
- 5.THE INSPECTOR OF POLICE,
RAJATHANI POLICE STATION, THENI DISTRICT.
- 6.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.4093 of 2020
IN
CRL A(MD) No.267 of 2020
Date :13/10/2020

krk

<https://hccs.csls.gov.in/Services/19.10.2020> 4P 7C