



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Wednesday, the Seventh day of October Two Thousand Twenty

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PRESENT

The Hon`ble Mr.Justice K.KALYANASUNDARAM

and

The Hon`ble Mrs.Justice T.KRISHNAVALLI

CRL MP(MD) No.4376 of 2020

IN

CRL A(MD) No.581 of 2019

CHINNAMARIAPPAN

... PETITIONER/PETITIONER

Vs

THE STATE THROUGH,
THE INSPECTOR OF POLICE,
MANOOR POLICE STATION,
TIRUNELVELI DISTRICT.
CRIME NO.385 OF 2015

... RESPONDENT/RESPONDENT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the operation of the Order dated 19.11.2019 passed in S.C.No.599 of 2016 on the file of the IV Additional Sessions Judge, Tirunelveli, Tirunelveli District and release the petitioner forthwith.

PRAYER IN CRL A(MD) No.581 of 2019:

Pleased to admit this appeal on file, to call for the records from the lower court in S.C.No.599 of 2016, on the file of the IV Additional Sessions Judge, Tirunelveli, Tirunelveli District and set aside the judgment dated 19.11.2019 by acquitting the appellants by allowing the Appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.V.KATHIRVELU, Senior Counsel for Mr.K.PRABHU, Advocate for the

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petitioner and of Mr.R.ANANDARAJ, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

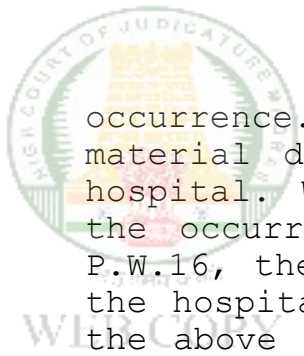
[Order of the Court was made by K.KALYANASUNDARAM, J.]

The accused in S.C.No.599 of 2016, on the file of the IV Additional Sessions Judge, Tirunelveli, Tirunelveli District were tried and convicted for various charges including Section 302 of IPC., on the allegation that they caused the death of the deceased Raman @ Ramakrishnan on 30.10.2015. Pending appeal, in respect of A1 and A4, suspension of sentence was granted by this Court in Crl.M.P (MD)Nos.10777 and 10782 of 2019 in Crl.A(MD)No.581 of 2019, vide order, dated 03.01.2020. This application is filed by the Petitioner/A2 in the above case, seeking suspension of sentence.

2.The case of the prosecution is that the third accused namely, Sekar married P.W.3 Mahalakshmi about two years prior to the date of occurrence and they lived together only for six months. It is alleged that the third accused demanding ten sovereigns of jewels, sent her out from the matrimonial home and even after providing ten sovereigns by the deceased, she was not permitted to live with A3 in the matrimonial home and hence the deceased was pressurizing the accused continuously to take her back to the matrimonial home. Enraged over the act of the deceased, on 30.10.2015 at 6.00 p.m., when the deceased was proceeding to take a tea near bus-stand of Azhagiapandiapuram, the accused 1 to 3 followed him in a two-wheeler and A2 and A3 inflicted injuries with Aruval at the instigation of A1 and A4 and the deceased succumbed to the injuries.

3.The prosecution examined P.Ws 1 to 22 and marked Ex.P1 to Ex.P26 and produced M.Os.1 to 10 to substantiate the charge levelled against the accused. The learned Sessions Judge accepting the evidence of the prosecution, convicted all the accused. Challenging the conviction, the present Criminal Appeal is filed.

4.Mr.S.Kathirvel, learned Senior Counsel appearing on behalf of the Petitioner would argue that though the prosecution had examined ten eye-witnesses, except P.Ws.2,3,11 and 12, all other witnesses have turned hostile. It is the contention of the learned Senior Counsel that the evidence of P.W.2 and P.W.3 is to the effect that the Accused/A2 and A3 have caused cut injuries on the deceased, while the independent and natural witnesses P.W.11 and P.W.12 would categorically state that A3 alone had attacked the deceased. It is the further contention of the learned Senior Counsel that there were blood-stains in the clothes worn by P.Ws. 2 and 3 at the time of occurrence, but the prosecution has failed to recover the same from the witnesses.This shows that they are not present in the scene of occurrence. The learned Senior Counsel also drew the attention of this Court to the evidence of P.W.11 and P.W.12, who have also not spoken about the presence of P.W.2 and P.W.3 in the scene of



occurrence. According to the learned Senior Counsel, there are material discrepancies with regard to taking of the body to the hospital. When P.W.2 and PW.3 have deposed that immediately after the occurrence, the body was taken to hospital in an Ambulance, P.W.16, the Village Assistant has stated that the body was taken to the hospital by the Police at 8.30 p.m., on 30.11.2015. In view of the above contradictions, the Petitioner may be enlarged on bail, by suspending the sentence.

5.Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor appearing for the respondent would argue that the post-mortem Certificate would show that the deceased had sustained totally 45 injuries and the evidence of independent witnesses P.W.11 and P.W.12 coupled with the interested testimony of P.W.2 and P.W.3 would categorically prove that the injuries were caused by A2 and A3 in this case. It is the submission of the learned Additional Public Prosecutor that the prosecution has proved the case beyond reasonable doubt the motive for commission of the offence and the overtacts attributed to the accused and prays to dismiss the Petition.

6.This Court, considering the overtact attributed to A1 and A4, was inclined to suspend the sentence vide order, dated 3.1.2020. It is now brought to the notice of this Court that the independent witnesses P.W.11 and P.W.12 have deposed before the trial Court stating that the injuries were caused only by A3. It is also brought to the notice of this Court that the deceased was having 4 or 5 criminal cases to his credit, which is admitted by his wife, who was examined as P.W.1. Considering all these aspects, we are of the opinion that the Petitioner/A2 is entitled for suspension of sentence, pending appeal. 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 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 Judicial Magistrate No.IV, Tirunelveli.

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 No.IV, Tirunelveli, at 10.30 a.m. on the first working day of every English Calendar month



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/-
07/10/2020

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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 concerned.

TO

1. THE IV ADDITIONAL SESSIONS JUDGE,
TIRUNELVELI, TIRUNELVELI DISTRICT.
2. THE JUDICIAL MAGISTRATE NO IV, TIRUNELVELI.
3. DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI DISTRICT.
4. THE INSPECTOR OF POLICE,
MANOOR POLICE STATION,
TIRUNELVELI DISTRICT.
5. THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.
6. THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.4376 of 2020
IN
CRL A(MD) No.581 of 2019
Date : 07/10/2020

VSN

<https://hcmv/CaseRecords/2020/4P/7C>