



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

Thursday, the Fifteenth day of October Two Thousand and Twenty

PRESENT

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

CRL MP(MD) No.4631 of 2020
IN
CRL A(MD) No.480 of 2018

NIMAL @ KAKKAIYAN

... PETITIONER/ 3rd APPELLANT

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
SIPCOT POLICE STATION,
THOOTHUKUDI,
THOOTHUKUDI DISTRICT.
CRIME NO.349/2015

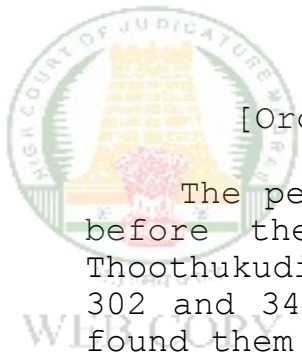
... RESPONDENT/ RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the conviction and sentence and grant bail to the appellant pending disposal of the criminal appeal before this Hon`ble court against the Judgment in S.C.No.117 of 2017 on the file of the Learned II Additional Sessions Judge, Thoothukudi, Thoothukudi district pending disposal of the Criminal Appeal (MD) No.480 of 2018 on such terms and conditions as may be deemed fit and thus render justice.

PRAYER IN CRL A(MD) No.480 of 2018:

To call for the records in Sessions Case No.117 of 2017 on the file of the learned II Additional District Sessions Judge, Thoothukudi, Thoothukudi District, and set aside the judgment dated 13.08.2018 and acquit the appellants of the charges leveled against them.

Order : This petition coming on for orders on this day upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.R.VENKATESAN, 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.**]

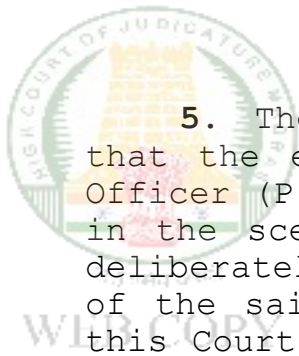
The petitioner along with one Selvaraj and Rajendran were tried before the learned II Additional District and Sessions Court, Thoothukudi, in S.C.No.117 of 2017, for the offence under Sections 302 and 341 I.P.C. The Trial Court, by Judgment dated 13.08.2018, found them guilty for the said offence. The conviction and sentence imposed on the petitioner herein (A3) is as follows:

Section of Law	Sentence of imprisonment
302 I.P.C.	To undergo life imprisonment and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for three (3) months.
341 I.P.C.	To undergo one (1) month simple imprisonment.

2. Aggrieved over the conviction and sentence, A3 (petitioner herein) A1 and A2 have preferred the present criminal appeal. Pending appeal, the petitioner (A3) has filed this criminal miscellaneous petition seeking to suspend substantive sentence of imprisonment imposed on him by the Trial Court in the above sessions case.

3. The case of the prosecution is that the deceased Arumugam and the Rajendran (A1) had been engaged in real estate business and they purchased 22 ½ Acres of land in Pudukkottai - Sirupadu Road in the name of Seethalakshmi, wife of the deceased. Since dispute arose between them, a suit in O.S.No.30 of 2011 was instituted by the Rajendran (A1), before the I Additional District Judge, Thoothukudi and the suit was decreed in his favour. Aggrieved over the Judgment and Decree, the deceased Arumugam is said to have preferred an appeal. Since the deceased was not coming for compromise, it is the case of the prosecution that on 27.09.2015, at 07.00 a.m., while the deceased was going for his morning walk along with his son Vignesh (P.W.1), all the accused waylaid them and attacked the deceased Arumugam with weapons and he succumbed to the injuries on 29.09.2015.

4. Mr.A.Venkatesan, learned counsel for the petitioner, would submit that the earlier two applications filed by the A1-Rajendran were not considered on merits and the first application was dismissed on the ground that it was too early and when the second application was taken up for hearing, this Court felt that the main appeal itself can be taken up for hearing and hence, the second application was dismissed as withdrawn. The learned counsel further contended that even though P.Ws.1 to 3 have been cited as eye-witnesses to the occurrence, but, admittedly, P.Ws.2 and 3 have turned hostile and hence, the entire prosecution case hinges on the evidence of P.W.1.



5. The learned counsel for the petitioner further contended that the evidence of P.W.4 and the evidence of the Investigating Officer (P.W.17) would reveal that P.W.1 would not have been present in the scene of occurrence and he was planted by the prosecution deliberately to lodge a false case against the accused. In support of the said contention, the learned counsel drew the attention of this Court to the Accident Register (Ex.P22), wherein, it is stated that the deceased was attacked by an unknown person. It is also contended that as per the Accident Register (Ex.P22), the occurrence had taken place at Palpandi Nagar, but, as per the prosecution case, the place of occurrence is Millarpuram. It is further submitted that the petitioner (A3) has been falsely implicated in this case and moreover the Petitioner's name not found place in FIR and hence, prays for suspension of sentence imposed on the petitioner (A3).

6. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor, would oppose the petition contending that the motive for the occurrence is the land dispute and the same was proved through the evidence of P.W.1. It is further argued that P.W.1 first informed the injuries sustained by his father to P.Ws.4 and 5 and thereafter, he had gone to his house to inform his mother. So, the deceased was taken to the Hospital by P.W.4, who has stated that the deceased was attacked by an unknown person. According to the learned Additional Public Prosecutor, there is no discrepancy in the evidence of the prosecution witnesses with regard to the place of occurrence and hence, prayed for dismissal of the application.

7. Heard the learned counsel on either side and perused the materials available on record.

8. In the matter on hand, it is not disputed that the prosecution projected P.Ws.1 to 3 as eye-witnesses to the occurrence, however, P.W.2 and P.W.3 turned hostile and they did not support the case of the prosecution. It is to be noted that the Investigating Officer (P.W.17) has admitted in his cross-examination that during the course of investigation, P.W.1 implicated one Parisuthakumar, but, no charge sheet was filed against him. In the chief-examination, P.W.1 has deposed that when he and his father were going for morning walk, the accused attacked his father. But, in the cross-examination, he deposed that when he was alighting from the bike, the occurrence had taken place. P.W.4, in his cross-examination, has deposed that he and P.W.1 had gone together to the Hospital.

9. Considering the above facts and circumstances of the case, we are inclined to suspend the substantive sentence of imprisonment imposed on the petitioner (A3). Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment imposed on the petitioner (A3) alone is suspended, subject to the following conditions:



i. The petitioner (A3) 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.I, Thoothukudi.

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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.I, Thoothukudi, 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/-
15/10/2020

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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 II ADDITIONAL DISTRICT SESSIONS JUDGE,
THOOTHUKUDI, THOOTHUKUDI DISTRICT.
- 2 THE JUDICIAL MAGISTRATE NO.I, THOOTHUKUDI.
- 3 DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE, THOOTHUKUDI DISTRICT.
- 4 THE INSPECTOR OF POLICE, SIPCOT POLICE STATION,
THOOTHUKUDI, THOOTHUKUDI 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.4631 of 2020
IN CRL A(MD) No.480 of 2018
Date :15/10/2020