



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

Thursday, the Third day of December Two Thousand and Twenty

PRESENT

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

CRL MP(MD) No.5904 of 2020
IN
CRL A(MD) No.425 of 2019

THOMAS

... PETITIONER/APPELLANT

Vs.

STATE REP.BY
THE INSPECTOR OF POLICE,
SEITHUNGANALLUR POLICE STATION,
THOOTHUKUDI DISTRICT.

... RESPONDENT/RESPONDENT

Prayer in CRL MP(MD). 5904/ 2020 :

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to Suspend the sentence imposed passed by the Honourable Principal Sessions Judge, Thoothukudi dated 03.07.2019 in S.C No. 400/2015 pending disposal of the above Criminal Appeal.

Prayer in CRL A(MD) No.425 of 2019:

To call for the records relating to the judgment passed in S.C.No.400 of 2015 dated 03.07.2019 on the file of the Principal Sessions Judge, Thoothukudi and to set-aside the same.

ORDER: This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.G.THIRUVARUTSELVAN, Advocate for the petitioner and of MR.K.K.RAMAKRISHNAN, 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/sole accused in S.C.No.400 of 2015 on the file of the Principal Sessions Judge, Thoothukudi was charged for the offences punishable under Sections 294(b), 302 and 506(ii) IPC. The trial Court convicted the petitioner for all the charges and imposed maximum punishment to undergo life imprisonment. Challenging the same, the present appeal has been filed. Pending appeal, the



2.The case of the prosecution is that the deceased Vasantha is the sister of the accused. The deceased was deserted by her husband and hence, she continues to live with her parents along with her children. It is alleged that their family owns land to an extent of 10 acres and they were also having cattle in 75 numbers. Though the accused had been demanding his father Ramalingam to partition the properties, it was not done. It is further stated that the accused was repeatedly telling that if his sister Vasantha was done to death, he can acquire entire properties. On 14.09.2014, the deceased Vasantha along with P.Ws.2 and 3 were grazing the cattle in the land belonging to one Mariya John at about 2.00 p.m, they sold some of the cattle to P.Ws.4 to 6. Knowing the fact, the accused came to the spot and had wordy altercation with the deceased and thereafter, inflicted fatal injuries with M.O.1 Aruval.

3.The prosecution projected P.Ws.1 to 7 as eyewitnesses to the occurrence and also examined P.Ws.9 and 10 to prove the confession and recovery of the weapon. Though the witnesses P.Ws.4 to 7 and 10 turned hostile, the trial Court, by placing reliance on the evidence of the other witnesses, convicted the accused and sentenced as stated above. Challenging the same, the present appeal.

4.Mr.G.Thiruvavutselvan, learned counsel for the petitioner/accused would argue that P.W.1 to 3 are close relatives of the deceased and the prosecution failed to examine any independent witness to prove the charge against the accused. It is further contended that the presence of the witnesses in the scene of occurrence is highly doubtful for the reason that P.Ws.2 and 3 would categorically state that they went to the scene of occurrence only after receiving information from P.W.1 and with regard to the preferring the complaint also, there are material contradictions in the evidence of P.W.1. The learned counsel has also drawn the attention of this Court to the evidence of P.Ws.8 and 16 with regard to availability of the body in the scene of occurrence. P.W.8, who is the eyewitness for Observation Mahazer, deposed that when he went scene of occurrence at 5.00 p.m, the dead-body was not available, but according to P.W.16, inquest was conducted over dead-body between 18.30 hours to 20.30 hours viz., 06.30 to 08.30 in the place of occurrence. In view of the above contradictions, the learned counsel prays for suspension of sentence to the petitioner/accused.

5.Per contra, Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor would argue that merely because P.Ws.1 to 3 are close relatives of the deceased, their evidence cannot be discarded. According to the learned Additional Public Prosecutor, the testimony of P.Ws.1 to 3 are natural and reliable and on accepting their evidence, the trial Court rightly convicted the accused. He would further submit that even though there is a contradiction in the evidence of P.Ws.2 and 3, there is no reason to disbelieve the evidence of P.W.1 and his evidence remains intact. It is further



submitted that the complaint was presented by P.W.1 to the police station and it has been proved and hence, the accused is not entitled for suspension of sentence.

6.In the matter on hand, it is not in dispute that the deceased is the sister of the petitioner/appellant and the occurrence is said to have taken place on 14.09.2014 at about 02.00 p.m. According to P.W.1, when he along with P.Ws.2 and 3 were in the scene of occurrence, the accused came there and attacked the deceased with M.O.1 Aruval. However, in the cross examination, P.Ws.2 and 3 would admit that only after they were informed by P.W.1, they went to the scene of occurrence. Furthermore, P.W.9, Village Administrative Officer, in the chief examination has stated that in his presence, confession was recorded and M.O.1 was recovered. However, in the cross examination, he has stated that he does not know where the recovery was made and through whom. Further, he pleaded ignorance as to the place of recording the confession.

7.In the light of the above facts, we are of the opinion that the petitioner/appellant 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 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 Judicial Magistrate, Srivaikundam.

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, Srivaikundam, at 10.30 a.m. on the first working day of every English Calendar month until further orders.

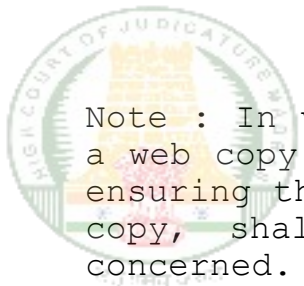
iv. On any particular date, if the petitioner is not able to appear, leave is granted to the petitioner to file an application under Section 317 Cr.P.C. and appear before the Trial Court on any other day, as determined by the Trial Court, in lieu of the day on which he would absent.

sd/-
03/12/2020

/ TRUE COPY /

/ /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.

WEB COPY

To

- 1 THE PRINCIPAL SESSIONS JUDGE,
THOOTHUKUDI.
- 2 THE JUDICIAL MAGISTRATE,
SRIVAİKUNDAM.
- 3 -DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THOOTHUKUDI.
- 4 THE INSPECTOR OF POLICE,
SEITHUNGANALLUR POLICE STATION,
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.5904 of 2020
IN
CRL A(MD) No.425 of 2019
Date: 03/12/2020

skn
JM/PN/SAR IV/08.12.2020/4P/7C