



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

Thursday, the Seventeenth 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.6322 of 2020
IN
CRL A(MD) No.346 of 2020

MURUGESAN

... APPELLANT/ACCUSED NO.1

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
KARIVALAM VANTHANALLUR POLICE STATION,
TIRUNELVELI DISTRICT.
CRIME NO. 52/2015.

... RESPONDENT/COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the sentence imposed against the petitioner in S.C No. 40/2018 on the file of the Honourable IV Additional District and Sessions Court Tirunelveli dated 07.03.2020 and release the petitioner on bail till the disposal of the appeal.

Prayer in CRL A(MD) No.346 of 2020:

To call for the entire records connected to the judgment in S.C.No.40 of 2018 on the file of the Hon'ble IV Additional District and Sessions Court, Tirunelveli dated 07.03.2020 and set aside the conviction and sentence imposed against the appellant.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.R.ALAGUMANI, 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 appellant herein was tried by the IV Additional District and Sessions Judge, Tirunelveli for the charges punishable under Sections 364, 302, 201 IPC along with one Muthukumaran, however, pending trial, the said Muthukumaran died and hence, the charges against him abated. The conviction and sentence imposed on the

<https://hccservices.courts.gov.in/Act/Service> as follows:



Accused	Section of Law	Sentence of imprisonment
A1	364 I.P.C.	To undergo rigorous imprisonment for ten (10) years and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for two (2) years.
	302 I.P.C.	To undergo life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for two (2) years.
	201 I.P.C.	To undergo rigorous imprisonment for three (3) years and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for one (1) year.

2. Aggrieved over the conviction and sentence, the petitioner/appellant filed the present appeal. Pending appeal, he seeks suspension of sentence.

3. The case of the prosecution is that on 13.08.2006, at 03.00 p.m, the first accused assaulted the deceased with a weaving rod and caused grievous injuries and hence, he was tried for the offence under Section 326 IPC and convicted by the trial Court and the conviction was also confirmed by the appellate Court and he underwent sentence at Palayamkottai Central Prison. The further case of the prosecution is that in pursuance of the earlier motive, on 17.01.2015 at 20.00 hours, both the accused conspired together to eliminate the deceased and consequent thereto, on 18.02.2015 at 09.00 a.m both the accused took the deceased in a two wheeler bearing Reg.No.TN-76-3016 to consume liquor. It is also the case of the prosecution that after the deceased having heavy drunk, the second accused caught-hold the deceased and the first accused assaulted the deceased with a stone (M.O.5) and caused his death. There is no direct witness for the occurrence and hence, the prosecution placed reliance on the circumstantial evidence, P.Ws.4, 5 and 11, who were examined to prove the last scene theory. P.W.22, Village Administrative Officer speaks about the arrest, recovery of M.O.5 weapon and confession of A1. The trial Court, having held the prosecution had succeeded in proving the charges against the accused, convicted him and imposed the sentence, as stated supra.

4. Mr.R.Alagumani, learned counsel for the petitioner would submit that all the witnesses examined by the prosecution are interested witnesses and the prosecution did not examine any independent witnesses to prove the charge against the accused. It is also submitted that the evidence of P.Ws.4 and 5 is highly unbelievable and their testimony has to be rejected. It is also submitted that in view of the earlier conviction under Section 326 IPC, the evidence of the prosecution has been falsely roped in this case. According to



the learned counsel for the petitioner, since the case of prosecution has not been proved beyond reasonable doubt, the petitioner is entitled for suspension of sentence. It is the submission of the learned counsel for the petitioner that the occurrence had taken place in the year 2015 and during investigation, the accused was granted bail and after conviction, he has been in judicial custody for more than 5 years.

5.Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor appearing on behalf of the respondent would submit that the accused has a strong motive to commit murder and the first accused after serving sentence in the earlier conviction, decided to murder the deceased.

6.In the matter on hand, it is admitted that there is no eyewitnesses to the incident and the prosecution strongly placed reliance on the earlier conviction of the accused for the charge punishable under Section 326 IPC and hence, the accused decided to kill the deceased. It appears that both the accused and the deceased are belonging same village and if strained relationship in view of the earlier conviction is continued, the story of the prosecution that the deceased and the first accused consumed liquor together, has created a doubt. Furthermore, in the course of evidence, P.Ws.4 and 5 have stated that they not only seen the deceased with accused, but they also saw that the accused assaulted the deceased at the time of occurrence, if that is so, they would have immediately informed the incident to the relatives of the deceased. On the contrary, they were examined by the police only on 20.02.2015 i.e., after two days from the date of occurrence, but the trial Court mainly placing reliance on the evidence of P.Ws.4 and 5, convicted the accused.

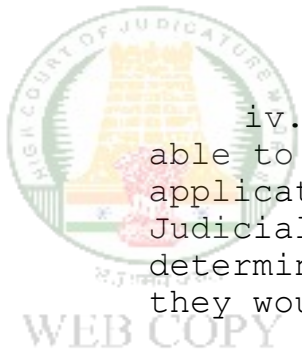
7.In the light of the above fact, we are of the opinion that the Petitioner/A1 is entitled for suspension of sentence during pendency of the appeal. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment imposed on the petitioner/A1 is suspended, subject 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, Sankarankovil.

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 stay at Dharmapuri and appear before the learned Judicial Magistrate No.II, Dharmapuri at

<https://hcservices.ecourts.gov.in/hcservices> on all working days, 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 Judicial Magistrate No.II, Dharmapurai on any other day, as determined by the said Court, in lieu of the day on which they would absent.

sd/-
17/12/2020

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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 IV ADDITIONAL DISTRICT AND SESSIONS COURT, TIRUNELVELI.
- 2 THE JUDICIAL MAGISTRATE, SANKARANKOVIL.
- 3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE, TIRUNELVELI.
- 4 THE JUDICIAL MAGISTRATE NO.II, DHARMAPURI.
- 5 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE, DHARMAPURAI.
- 6 THE INSPECTOR OF POLICE, KARIVALAM VANTHANALLUR POLICE STATION, TIRUNELVELI DISTRICT.
- 7 THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI.
- 8 THE ADDITIONAL PUBLIC PROSECUTOR, MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.R.ALAGUMANI, Advocate (SR-8319[I] dated 17/12/2020)

ORDER
IN
CRL MP(MD) No.6322 of 2020
IN
CRL A(MD) No.346 of 2020
Date :17/12/2020

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<https://hcmjce.scribd.com/document/512020/4P/10C>