



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

Monday, the Twenty First 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.6384 of 2020

IN

CRL A(MD) No.212 of 2019

CHINNADURAI

... PETITIONER/APPELLANT/ACCUSED No.2

Vs

STATE REPRESENTED BY,
THE INSPECTOR OF POLICE,
ANNAVASAL POLICE STATION,
PUDUKOTTAI DISTRICT.
IN CRIME NO.95 OF 2017.

... RESPONDENT/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 Execution of sentence by granting bail in SC.No. 165 of 2017, dated 23.04.2019 on the file of the Additional District and Sessions Judge, Pudukottai, Pudukottai District till the disposal of the Criminal Appeal.

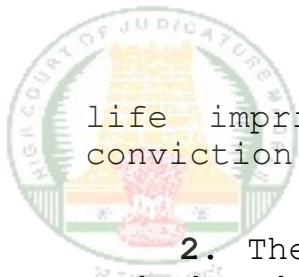
PRAYER IN CRL A(MD)No.212/2019:

To call for the entire records pertaining to the judgment delivered by the learned Additional District and Sessions Judge, Pudukottai, Pudukottai District in S.C.No.165 of 2017 vide his judgment dated 23.04.2019 and set aside the same by acquitting the appellant honorably.

Order:This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of MR.V.KATHIRVELU, Senior Counsel assisted by MR.K.PRABHU, 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 was arrayed as A2 in Sessions Case No.165 of 2017, on the file of the Additional District and Sessions Court / Special Court for E.C. and N.D.P.S.Act Cases, Pudukkottai. He was tried along with six other accused for the offence punishable under Sections 120(b), 148, 341, 302, 307 r/w 149 I.P.C. All the accused were convicted by the learned Sessions Judge and sentence including

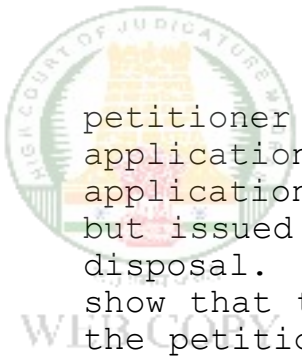


life imprisonment has been imposed on them. Challenging the conviction and sentence, the present appeal has been filed.

2. The case of the prosecution is that A1 to A6 are relatives and they belonged to Koothinipatti Village. P.W.1 - Punniyamoorthi is the son of the deceased Chelladurai. It is the further case of the prosecution that A1 - Rajendran was the Panchayat President of Koothinipatti Village. In the year 2015, the *de facto* complainant / P.W.1 installed a flex board for the marriage function of his relative Balraj. A1, being the Panchayat President, objected the same and directed the complainant party to install the flex board at some distance. In this regard, there was a quarrel between them and a complaint was also lodged to the respondent - Police. According to the prosecution, the villagers used to conduct Annadhanam in the Murugan Temple in the Tamil month of Chithirai every year. Accordingly, in the year 2017, the accused party planned to celebrate Annadhana Festival, excluding the *de facto* complainant's family. In this regard also, quarrel arose between the accused party and the complainant party on 12.05.2017 and both parties gave complaints before the respondent - Police. While so, on 11.00 p.m. on 12.05.2017, the accused 1, 2 and 6 armed with Aruval, accused 3, 4, 5 and 7 armed with wooden log formed unlawful assembly to eliminate the deceased. In pursuance thereof, A1 with Aruval attacked the deceased below his left eye; A2 (petitioner herein) with Aruval cut on his right thigh and A3 with wooden log attacked on his chest. The overt acts against A4 to A7 are that they attacked the witnesses with lethal weapons. When the injured were taken to Purukkottai Government Hospital, the Doctor declared Chelladurai brought dead and hence, the charges.

3. Mr.V.Kathirvelu, learned Senior Counsel, assisted by Mr.K.Prabhu, learned counsel on record for the petitioner, would argue that out of seven accused, except the petitioner herein, all the accused were granted suspension of sentence by this Court. According to the learned Senior Counsel, A1 was granted bail by this Court vide order dated 10.01.2020 in Crl.M.P.(MD) No.215 of 2020, wherein this Court has elaborately considered the evidence of the Investigating Officer and recording a finding that the Trial Court has not noticed and considered the discrepancies in the evidence of the Investigating Officer, granted bail to A1. It is the submission of the learned Senior Counsel that the P.W.14 - Dr.Kumarean, who conducted postmortem over the body of the deceased, found an injury on the left temporal region of the deceased and that injury has remained unexplained by the prosecution witnesses. Since the petitioner herein (A2) is also similarly placed that of A1 and A3, his case may be considered for suspension of sentence.

4. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor would argue that this the sixth application filed by the



petitioner for suspension of sentence and the earlier two applications were dismissed as withdrawn and in the other two applications, this Court was not inclined to suspend the sentence, but issued a direction to the Registry to post the appeal for final disposal. It is also contended that the evidence of P.W.14 would show that the deceased died only on account of the injury caused by the petitioner (A2) and hence, he is not entitled for suspension of sentence.

5. Heard Mr.V.Kathirvelu, learned Senior Counsel assisted by Mr.K.Prabhu, learned counsel for the petitioner and Mr.R.Anandharaj, learned Additional Public Prosecutor appearing for the State and carefully perused the materials available on record.

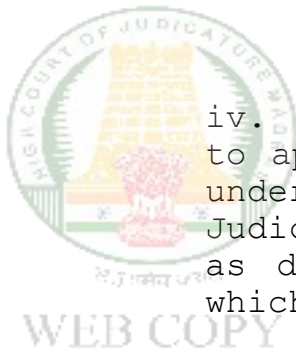
6. In the matter on hand, it is not disputed that there are seven accused in this case and as per the prosecution case, P.Ws.1 to 4 have stated before the Trial Court that A1 caused injury below the left eye of the deceased; A2 attached on his right thigh, while A3 caused injury on his chest. As rightly pointed out by the learned Senior Counsel that the injury on the left temporal region of the deceased was not explained by the eyewitnesses. That apart, the earlier Division Bench has also considered the evidence of the Investigating Officer and found that there are discrepancies in his evidence. It is relevant to note that in regard to A1 also earlier bail petitions came to be dismissed and later, he was granted suspension of sentence. So, we are of the opinion that the petitioner (A2) is also entitled for suspension of sentence.

7. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment alone imposed on the petitioner herein 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, Keeranur.

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 stay at Krishnagiri and report before the learned Judicial Magistrate No.I, Krishnagiri, daily at 10.30 a.m. until further orders.



iv. On any particular date, if the petitioner is not able to appear, leave is granted to him to file an application under Section 317 Cr.P.C. and appear before the learned Judicial Magistrate No.I, Krishnagiri, on any other day, as determined by the said Court, in lieu of the day on which he would absent.

sd/-
21/12/2020

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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 ADDITIONAL DISTRICT AND SESSIONS JUDGE,
PUDUKKOTTAI
 - 2.THE JUDICIAL MAGISTRATE, KEERANUR
 - 3.DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
PUDUKKOTTAI DISTRICT
 - 4.THE JUDICIAL MAGISTRATE NO.I, KRISHNAGIRI
 - 5.DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
KRISHNAGIRI DISTRICT
 - 6.THE SUPERINTENDENT, CENTRAL PRISON, TRICHY
 - 7.THE INSPECTOR OF POLICE,
ANNAVASAL POLICE STATION, PUDUKOTTAI DISTRICT.
 - 8.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1. C.C. to M/S.K.PRABHU Advocate SR.No.8434

ORDER IN
CRL MP(MD) No.6384 of 2020
IN CRL A(MD) No.212 of 2019
Date :21/12/2020

KRK

<https://hccs.ecs.mca.gov.in/cse/12.2020> : 4P/10C