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

Friday, the Third day of January Two Thousand Twenty
PRESENT

**The Hon`ble Mr.Justice T.RAJA
and**

The Hon`ble Mr.Justice B.PUGALENDHI

Crl.M.P. (MD) No.10777 and 10782/2019 in
Crl.A. (MD)No.581 of 2019

PERIA MARIAPPAN @ MARIAPPAN
NOW AT CENTRAL PRISON,
PALAYAMKOTTAI

... PETITIONER /APPELLANT NO.1
in Crl.M.P(MD)No.10777 OF 2019

ILAIYARAJA
NOW AT CENTRAL PRISON,
PALAYAMKOTTAI

...PETITIONER/APPELLANT NO.4
in Crl.M.P(MD)No.10782 OF 2019

Vs

STATE REPRESENTED BY
THE INSPECTOR OF POLICE
MANOOR POLICE STATION,
TIRUNELVELI DISTRICT
(CRIME NO.385 OF 2015)

... RESPONDENT/RESPONDENT
IN BOTH PETITIONS

Prayer in CRL MP(MD)No. 10777/ 2019 :

to suspend the execution of sentence by granting bail in
S.C.No.599 of 2016 on the file of the IV Additional Sessions Judge,
Tirunelveli, Tirunelveli District dated 19.11.2019 till the disposal
of Criminal Appeal.

Prayer in CRL MP(MD)No. 10782/ 2019 :

to suspend the execution of sentence by granting bail in
S.C.No.599 of 2016 on the file of the IV Additional Sessions Judge,
Tirunelveli, Tirunelveli District dated 19.11.2019 till the disposal
of Criminal Appeal.

Order : These petitions coming on for orders upon perusing the
petitions filed in support thereof and upon hearing the arguments of
Mr.V.Kathirvelu, Senior Counsel for M/S.K.PRABHU, Advocate for the
petitioners in both petitions and of Mr.R.Anandharaj, Additional
Public Prosecutor for the Respondents in both petitions, the court
made the following order:-



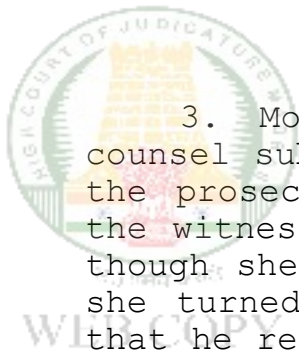
(Order of the Court was made by T.RAJA, J.)

The appellants, who are arrayed as accused Nos.1 to 4 in S.C.No.599/2016 on the file of the IV Additional Sessions Judge, Tirunelveli, were convicted and sentenced by judgment dated 19.11.2019 as follows:

S.No	Rank of the Accused	Offence for which convicted	Sentence
1	A-1 to A-4	341 IPC	To undergo one month simple imprisonment with fine of Rs.500/-, in default, to undergo simple imprisonment for one week
2	A-2 & A-3	302 IPC	To undergo imprisonment for life and fine of Rs.5,000/- each, in default, to undergo rigorous imprisonment for two years
3	A1 to A-4	302 r/w 109 IPC	To undergo imprisonment for life with fine of Rs.5,000/- each, in default, to undergo rigorous imprisonment for two years.

Pending appeal, A1 and A4 are before this Court with these petitions seeking suspension of substantive sentence of imprisonment.

2.Learned Senior counsel for the petitioners/A1 & A4 submitted that the petitioners are the eldest son and father respectively are before this Court with these petitions seeking suspension of substantive sentence imposed against them. The learned Senior Counsel contended that it is not a case of single contradiction that was overlooked by the trial Court, but several material contradictions placed before the trial Court have been completely ignored resulting the conviction of A-1 to A-4. It is also the admitted case of the prosecution that on the instigation of A-1 and A-4, A-2 and A-3 committed the offence, which led to the cause of the death of the deceased Ramar @ Ramakrishnan, who is the brother-in-law of A-3. Explaining the contradictions that should have been accepted by the trial Court, the learned Senior Counsel further argued that when P.W.-2 stated that P.W.-3 was conceived, the prosecution claimed that A-3 and P.W.-3 were not living together is a material contradiction, which has been completely sidelined by the trial Court. However, this has to be looked into by this Court, while taking up the matter for final hearing.

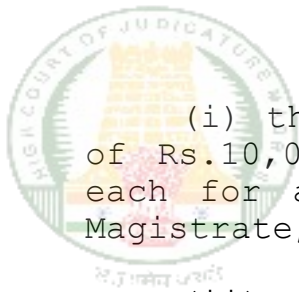


3. Moving to the second contradiction, the learned Senior counsel submitted that when the time of occurrence was projected by the prosecution as 6.00 p.m., P.W.-2 deposed, while stepping into the witness box, that she went to the police station at 9.00 p.m., though she narrated the occurrence as that of P.W.-1, subsequently she turned hostile. P.W.-17-Sub Inspector of Police also deposed that he received the information only at 8.00 p.m., which is highly unbelievable, for the simple reason that when the occurrence, as claimed by the prosecution, took place at 6.00 p.m., there cannot be such a long delay in getting the message that the deceased was overpowered and subsequently died at 6.00 p.m. Even the Village Assistant-P.W.-16, while deposing before the trial Court, also stated that the body was sent to the hospital only at 8.30 p.m. The trial Court has not even tried to find out why there was a huge delay from 6.00 to 8.30 p.m. Altogether the entire contradictions placed and projected by the accused that the occurrence took place at 6.00 p.m. have been disbelieved by the trial Court. In any event, since there is no overt act attributed as against A-1 and A-4 as alleged by the prosecution, they are entitled to move this present application seeking suspension of substantive sentence of imprisonment.

4. Opposing the above prayer, the learned Additional Public Prosecutor submitted that when P.W.-11 and P.W.-12 have clearly implicated A-2 and A-3, who have acted only on the instigation and provocation of A-1 and A-4, they cannot be allowed to canvass before this Court that they are entitled to stand on a different footing than that of A-2 and A-3. Adding further, he has submitted that when the independent eyewitnesses, namely, P.W.-11 and P.W.-12 have also supported the case of the prosecution, it is not a fit case for suspending the sentence.

5. However, it may be mentioned herein that even if the arguments advanced by the learned Additional Public Prosecutor that the independent eyewitnesses P.W.-11 and P.W.-12 have established the participation of A-2 and A-3, as it has been prima facie established that A-1 and A-4 have only instigated and provoked A-2 and A-3 for the commission of the alleged offence and moreover, the motive of the accused demanding dowry also requires to be examined by this Court, for the reason that if there is a motive of making a demand of dowry, A-3 and P.W.-3 would not have lived together, in view of the aforementioned major contradictions projected before us and since there are arguable points in favour of the petitioners, this Court is inclined to suspend the substantive sentence of imprisonment alone pending appeal.

6. In the result, these petitions are allowed and the sentence of imprisonment alone is suspended pending appeal with the following conditions:



(i) the petitioners/A-1 and A-4 shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, No.V, Tirunelveli; and

(ii) The petitioners shall report before the concerned Court at 10.30 a.m., on the first working day of every month pending disposal of the appeal.

sd/-
03/01/2020

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

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

+2 CC to M/s.K.PRABHU, Advocate (SR-122, 123[I] dated 03/01/2020)

ORDER
IN
CRL MP (MD) Nos.10777 &
10782 of 2019
IN
CRL A (MD) No.581 of 2019
Date :03/01/2020

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ES/VR/SAR 3/03.01.2020/4P/9C

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