



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

Friday, the Twenty Sixth day of March Two Thousand and Twenty One

PRESENT

The Hon`ble Mr.Justice K.KALYANASUNDARAM
and
The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.901 of 2021
in
CRL A(MD)No.51 of 2020

PERIYARASU

... PETITIONER/APPELLANT/
ACCUSED No.2

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
UDAYALIPATTI POLICE STATION,
PUDUKKOTTAI DISTRICT.
CRIME NO.82 OF 2016

... COMPLAINANT/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 sentence of Imprisonment imposed by the Learned Mahila court, Pudukkottai District at Pudukkottai in S.C.No.96 of 2017 by the judgment dated 13/12/2019 and to enlarge the Appellant/ Petitioner on bail, pending disposal of the above said Criminal Appeal.

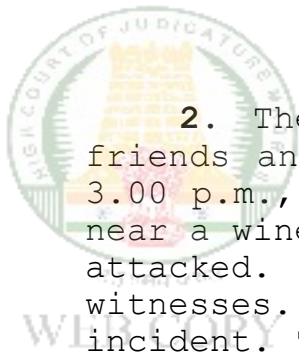
PRAYER IN CRL A(MD)No.51 of 2020:

Pleased to set aside the Judgment and Conviction dated 13.12.2019 by the Sessions Judge(FAC) Mahila Court, Pudukkottai in S.C.No.96 of 2017 and acquit the Appellants.

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.T.KUMAR, 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.]

A1 to A4, who were convicted by the Mahila Court, Pudukkottai in S.C.No.96 of 2017 for the offence under Sections 341, 324 and 302 r/w Section 34 of IPC., have preferred this appeal. Pending appeal, the second accused Periyarasu seeks suspension of sentence



2. The case of the prosecution is that all the accused are friends and native of Killukottai village. On 29.10.2016, at about 3.00 p.m., quarrel arose between the first accused and the deceased near a wine shop situated at Killukottai, in which, the deceased was attacked. Thereafter, the deceased informed the same to the witnesses. Then all of them questioned the first accused over the incident. Thereupon, the first accused called the other accused and the issue was pacified by the intervention of third parties. Then at about 4.00 p.m., when the deceased and the witnesses were proceeding to their village, they were waylaid by the accused, who were armed with weapons and in the attack, the deceased received multiple injuries and died on the spot.

3. The learned counsel appearing for the petitioner Mr.T.Kumar would argue that admittedly, there was no previous enmity between the accused and the deceased and only on sudden provocation, the incident had taken place. It is the further submission of the learned counsel for the petitioner that though the prosecution has projected P.Ws.1 to 3 as eyewitnesses to the occurrence, but their evidence is untrustworthy and unbelievable, since there are lot of discrepancies in their evidence. He would further add that the prosecution story is that the deceased was attacked with Aruval and Iron rod, but it has come out in the evidence that A3 by using sword assaulted the deceased. Further, the sword said to have been recovered from A3 was not sent for chemical analysis. The learned counsel would further submit that the overt act attributed against the second accused / petitioner herein is that he assaulted the deceased with aruval on the right side of his head.

4. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor appearing on behalf of the State would vehemently oppose the petition by contending that the testimony of P.W.s 1 to 3 who have witnessed the occurrence is cogent, reliable and only based on their evidence, conviction has been rendered by the trial Court. Even if there is no Serology Report for the sword recovered from A3, there is ample ocular evidence to sustain the conviction and prays for dismissal of the petition for suspension of sentence.

5. Heard the rival submissions and perused the materials available on record.

6. In the matter on hand, during cross-examination P.W.16 / Investigating Officer has admitted that the deceased was involved in a number of criminal cases, including murder. It is noticed that P.W.1, in the chief-examination itself, has admitted that he informed to the Doctor at the time of admission that the deceased was attacked with aruval and iron rod, but in this case, swords were said to have been used by two of the accused. The overt act attributed against the petitioner is that he assaulted the deceased with aruval on the right side of his head.



7. Considering the facts and circumstances of the case, we are of the opinion that the Petitioner/A2 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/A2 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 learned Judicial Magistrate, Keeranur.

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, Keeranur 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 they would absent.

sd/-
26/03/2021

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/ /2021

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

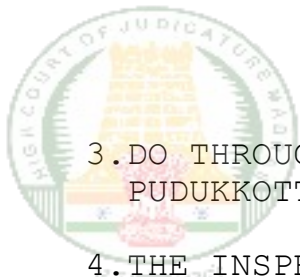
Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

TO

1. THE JUDGE, MAHILA COURT,
PUDUKKOTTAI DISTRICT AT PUDUKKOTTAI.

2. THE JUDICIAL MAGISTRATE,

<https://hcservices.mca.gov.in/hcservices/>



3.DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
PUDUKKOTTAI DISTRICT.

4.THE INSPECTOR OF POLICE
UDAYALIPATTI POLICE STATION,
PUDUKKOTTAI DISTRICT.

5.THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.

6.THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to Mr.T.KUMAR Advocate SR.No.2730

ORDER
IN
CRL MP (MD) No.901 of 2021
in
CRL A (MD) No.51 of 2020
Date :26/03/2021

KRK
TK/PN/SAR.3/31.03.2021/4P/8C