



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

Thursday, the Third day of June Two Thousand and Twenty One

PRESENT

The Hon'ble Mr.Justice K.KALYANASUNDARAM
and
The Hon'ble Mr.Justice B.PUGALENDHI

CRL MP(MD) No.594 of 2021 IN
CRL A(MD) No.39 of 2021

GURUNATHAN

... APPELLANT/ACCUSED No.1

Vs

THE STATE REP. BY
THE INSPECTOR OF POLICE,
MUNNEERPALLAM POLICE STATION,
TIRUNELVELI CITY.
CRIME No.260/2014

... 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 passed in S.C.No.688 of 2016 dated 27/11/2020 on the file of the III Additional District and Session Court, Tirunelveli enlarge the petitioner/Accused No.1 on bail pending disposal of the above appeal.

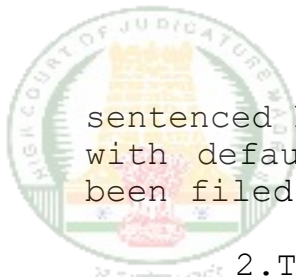
Prayer in CRL A(MD) No.39 of 2021:

To Call for the records in S.C.No.688 of 2016 dated 27.11.2020 on the file of the III Additional District and Sessions Court, Tirunelveli set aside the Judgment and Acquit the Appellant/1st Accused herein.

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.MOHIDEEN BASHA.N., Advocate for the petitioner and of Mr.S.CHANDRASEKAR, Additional Public Prosecutor on behalf of the Respondent, the Court made the following order:-

[Order of the Court was made by K.KALYANASUNDARAM, J.]

This Criminal Appeal has been preferred by A1 challenging the Judgment in S.C.No.688 of 2016, on the file of the III Additional Sessions Judge, Tirunelveli. Although a final report was laid against three accused for commission of murder, pending trial, A2 and A3 died and hence, the charge against them abated. The appellant herein, who was arrayed as A1, was tried for charge under Section 302 IPC. The learned Sessions Judge found him guilty and



sentenced him to undergo life imprisonment with a fine of Rs.1,000/- with default clause. Challenging the same, the present appeal has been filed. Pending appeal, he seeks suspension of sentence.

2.The story of the prosecution is that the deceased Karthikeyan @ Karthick is the son of A1 and A3. The deceased purchased a house plot in the name of A1 in the month of November 2011. The original documents with regard to the property was in the custody of the first accused. It is alleged that the deceased was repeatedly demanding the first accused to return the original sale deed, but it was refused by A1. In this regard, there was a wordy altercation between the first accused and the deceased. The further case of the prosecution is that on 29.07.2014 at 10.00 p.m, the deceased demanded for return of the sale deed. Enraging over the act of the deceased, the first accused assaulted him with Aruval on upper arm of the deceased. Thereafter, the second accused snatched the weapon from A1 and caused fatal blows to the accused and thereby caused his death.

3.The learned counsel appearing for the petitioner Mr.N.Mohideen Basha would argue that the prosecution examined P.W.1 to P.W.3 as eyewitness to the incident, but P.W.2 and P.W.3 have not supported the case of the prosecution. So, the prosecution relies only on the evidence of P.W.1 and the evidence of P.W.1 is highly artificial and unbelievable. It is the submission of the learned counsel for the petitioner that though P.W.1 is said to have witnessed the incident at 10.00 p.m on 29.07.2014, but the complaint was lodged only at 08.30 a.m on 30.07.2014. The delay in preferring the complaint was not properly explained. It is next contended that to prove the arrest and recovery of weapon, the prosecution examined P.W.11- Ganesan, but he turned hostile and other witness Iyyappan was not examined by the prosecution. He further added that even as per the case of the prosecution, the first accused inflicted only one injury, that too, on non-vital part of the deceased and fatal blows were caused only by A2. According to the learned counsel, the prosecution failed to prove the case against the petitioner and he is entitled for suspension of sentence.

4.Per contra, Mr.S.Chandrasekar, learned Additional Public Prosecutor appearing for the State would vehemently oppose the petition, contending that A1 has carried the weapon to the place of occurrence and after causing injury on the deceased, the weapon was handed over to A2 to murder the deceased. It is further contended that the learned Trial Judge had categorically found that all the injuries caused by A1 and A2 are cumulatively and independently fatal in nature and hence he is not entitled for suspension of sentence.

5.In the matter on hand, it is not in dispute that the deceased Karthikeyan @ Karthick is the son of A1 and A3. His



trial. As rightly pointed out by the learned counsel for the Petitioner that except P.W.1, no eye witness supported the case of the prosecution. P.W.1 has stated that she saw the incident on 10.00 p.m., on 29.07.2014 and immediately she got fainted and recovered only on the next day and lodged the complaint. It is also seen that the deceased survived for two days, but no Dying Declaration was recorded from the deceased. It is also relevant to note that the arrest and recovery has not been proved in the manner known to law.

6.Considering the above aspects, we are of the opinion that the accused 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 alone 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 No.V, Tirunelveli.

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 No.V, Tirunelveli, at 10.30 a.m. on the first working day of every English Calendar month until further orders.

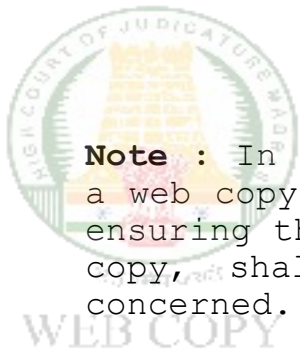
iv. On any particular date, if the petitioner is not able to appear, leave is granted to the petitioner to file an application under Section 317 Cr.P.C. and appear before the Trial Court on any other day, as determined by the Trial Court, in lieu of the day on which they would absent.

sd/-
03/06/2021

/ TRUE COPY /

/ /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 III ADDITIONAL SESSIONS JUDGE, TIRUNELVELI.
2. THE JUDICIAL MAGISTRATE No.V, TIRUNELVELI.
3. DO-THROUGH : THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI DISTRICT.
4. THE SUPERINTENDENT,
CENTRAL PRISON,
PALAYAMKOTTAI,
TIRUNELVELI DISTRICT.
5. THE INSPECTOR OF POLICE,
MUNNEERPALLAM POLICE STATION,
TIRUNELVELI CITY.
6. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL MP(MD) No.594 of 2021
IN
CRL A(MD) No.39 of 2021
Date :03/06/2021

VSN/SKN
TE/VR/SAR-IV : 03/06/2021 : 4P/7C