



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

Tuesday, the Twenty Second day of June Two Thousand and Twenty One

PRESENT

WEB COPY

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

CRL MP(MD) No.835 of 2021
in
CRL A(MD)No.17 of 2019

AVUDAIYAPPAN @ RAJ

... PETITIONER/APPELLANT/SOLE ACCUSED

Vs

STATE THROUGH
THE INSPECTOR OF POLICE,
TIRUNELVELI TOWN POLICE STATION,
TIRUNELVELI DISTRICT.
CRIME NO. 434/2015.

... 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 sentence imposed against the appellant in S.C No. 200/2016 on the file of the Honourable IV Additional Sessions Court, Tirunelveli Dated 09.01.2018 and release the appellant on bail till the disposal of the appeal.

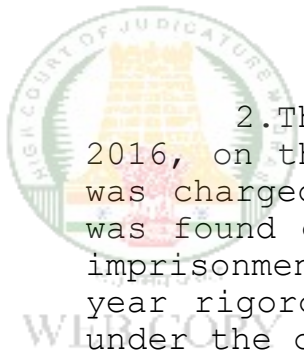
Prayer in CRL A(MD)No.17 of 2019:

To call for the entire records connected to the judgment in S.C.No.200 of 2016 on the file of the Hon'ble IV Additional Sessions Court, Tirunelveli dated 09.01.2018 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 Mr.R.VINOTH BHARATHI, Advocate for the petitioner and of Mr.S.RAVI, Standing counsel on behalf of the Respondent, the Court made the following order:-

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

This criminal miscellaneous petition has been filed by the petitioner/appellant seeking to suspend the sentence imposed against the appellant in S.C.No.200 of 2016, dated 09.01.2018, on the file of IVth Additional Sessions Court, Tirunelveli and to release the Petitioner/appellant on bail, till the disposal of the Criminal Appeal.



2.The Petitioner, who is the sole accused in S.C.No.200 of 2016, on the file of IVth Additional Sessions Court, Tirunelveli was charged for the offence under Sections 302 and 506(ii) IPC. He was found guilty after trial and he was sentenced to undergo life imprisonment with a fine of Rs.5,000/-, in default, to undergo one year rigorous imprisonment, while he was acquitted for the charge under the offence 506(ii) of IPC.

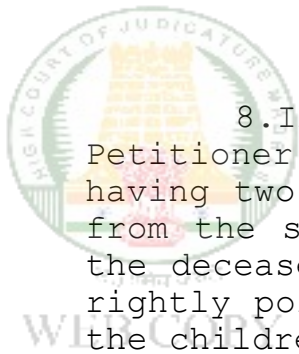
3.The prosecution case is that the deceased Ramalingam is the wife of the Petitioner and their marriage was solemnized on 11.04.2018. They are blessed with two children namely, Yuvaraj and Vaishnavi, aged 6 and 4 years respectively. It is alleged that on 6.8.2015, at about 1.45 a.m., the deceased with an intention to cause death of his wife, assaulted her with iron rod. Although the occurrence was witnessed by P.W.1 and P.W.2 and raised alarm, he repeated the attack and caused her death and also threatened the witnesses.

4.The prosecution to prove the charge adduced oral and documentary evidence. The learned Sessions Judge found him guilty and imposed with punishment as stated above. Challenging the same, the present appeal has been filed by the Petitioner appellant and he seeks suspension of sentence, pending the appeal.

5.Mr.R.Vinoth Bharathi, learned counsel for the Petitioner would state that the prosecution has examined P.W.1 to P.W.3 as eyewitnesses to the incident but their presence in the scene of occurrence, is highly doubtful. It is further contended that as per the prosecution, children of the deceased and the Petitioner informed the quarrel and attack to the eyewitness, but the children were not examined in this case. The case came to be registered on the basis of the complaint given by P.W.1 at 3.30 a.m on 6.8.2015, but the printed First Information Report reached the Court only at 8.45 a.m on the same day. The same was admitted by P.W.12. The explanation offered by P.W.12 could not be accepted and the Petitioner has been in judicial custody since the date of arrest ie., on 7.8.2015, for the past five and a half years and hence, he could be granted the relief of suspension of sentence in order to effectively present the appeal.

6.Per contra, Mr.S.Ravi, learned Standing Counsel appearing for the State vehemently opposed the bail petition stating that the incident was witnessed by P.W.1 to P.W.3, they are natural evidence and they cogently gave evidence against the Petitioner. The trial Court also based on the testimony of the eye witnesses convicted the Petitioner. It is further contended that the deceased is the wife of the Petitioner and hence no mercy can be shown, although he has been in judicial custody for more than five years.

7.Heard the rival submissions made on either side and perused <https://hcservices.mca.gov.in/hcservices> available before this Court.



8. In the present case, it is an admitted fact that the Petitioner was married to the deceased on 11.04.2008 and they are having two children. P.W.1 to P.W.3, who are residing 300 feet away from the scene of occurrence, have stated that the quarrel between the deceased and the Petitioner was informed by their children. As rightly pointed out by the learned counsel for the Petitioner, both the children were not examined in this case. It is also relevant to note that for the occurrence which took place at 1.30 a.m., on 6.8.2015, the case was registered at 3.45 a.m and the First Information Report reached the Court only at 8.45 a.m., on the same day. P.W.12, in his evidence, has categorically stated that the First Information Report was handed over to him at 3.30 a.m and within half an hour, he could reach the Magistrate Court concerned. But in the re-examination, he has stated that since the tyre of his vehicle got punctured, the delay had occurred. It is an admitted fact that P.W.1 to P.W.3 are residing 300 feet away from the scene of occurrence. That apart, we could see that there are arguable points in favour of the Petitioner/appellant in the appeal.

9. 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 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.IV, Tirunelveli..

ii. The petitioner shall appear before the learned Judicial Magistrate No.IV, Tirunelveli, at 10.30 a.m. on the first working day of every English Calendar month until further orders.

iii. 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 he would absent.

sd/-
22/06/2021

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

ORDER
IN
CRL MP (MD) No.835 of 2021
in
CRL A (MD) No.17 of 2019
Date :22/06/2021

VSN
AE/PN/SAR-III/28.06.2021/4P/7C