



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

Tuesday, the Thirtieth 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.928 of 2021
in
CRL.A(MD) .NO.55 of 2021

MUNIYASAMY

... PETITIONER/APPELLANT

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
SURANKUDI POLICE STATION,
THOOTHUKUDI DISTRICT,
CRIME NO. 142/2014.

... RESPONDENT/COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Pass an order of SUSPENSION OF SENTENCE to suspend the sentence of the Petitioner made in Conviction judgment dated 24.11.2020 in S.C No. 330/2016 on the file of the First Additional District and Sessions Court, Thoothukudi, pending disposal of the present Criminal Appeal.

PRAYER IN CRL.A(MD) .NO.55 of 2021:

pleased to set aside the conviction judgment dated 24.11.2020 made in S.C.No.330 of 2016 on the file of the Learned First Additional District and Sessions Court, Thoothukudi and consequently to acquit 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 M/S.M.S.JEYAKARTHICK, Advocate for the petitioner and of MR.R.ANANDHARAJ, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

O R D E R

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

The sole accused, in S.C.No.330 of 2016 on the file of the I Additional District and Sessions Judge, Tuticorin, was convicted for the charge punishable under Section 302 of IPC and sentenced to



undergo Life Imprisonment and also imposed a fine of Rs.2,000/- in default to suffer three months simple imprisonment. Aggrieved over the conviction and sentence, the present appeal has been filed. Pending appeal, he seeks suspension of sentence.

2. The story of the prosecution is that the deceased Marichamy is the cousin brother of the accused. P.W.1 is the full brother while P.W.2 is the wife of the deceased. It is alleged that on 08.09.2014 at 2.30 p.m., when the deceased Marichamy along with Muthuraj and Ayyasamy were removing the garbage through a tractor belongs to one Boopathi, the accused came there and questioned the deceased for using the tractor belonging to Boopathi, subsequently, attacked him with stick and caused his death.

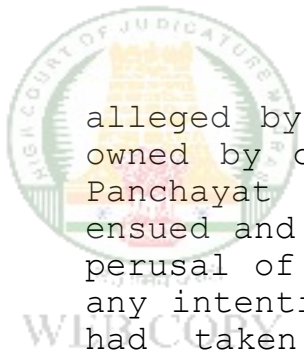
3. Mr.M.S.Jeyakarthick, learned counsel for the petitioner would submit that the petitioner is an innocent and the deceased died due to the injuries sustained by falling on the ground, however, due to previous enmity between P.W.1 and the accused, he has been falsely roped in this case. It is next contended that there was an inordinate and unexplained delay in lodging the complaint. The occurrence is said to have taken place on 08.09.2014 at 02.30 p.m., but the complaint was lodged only at 20.00 hours on 09.09.2014 and the delay was not at all explained by the prosecution.

4. It is further contended that the occurrence did not take place in the cattle shed as deposed by P.W.1 and the evidence of P.W.17 would show that there was no tractor and garbage found in the scene of occurrence. P.W.16-Doctor has admitted that there is a possibility for the deceased to sustain injury by falling down and it was only an accidental fall. The learned counsel for the petitioner brought to the notice of this Court that the Accident Register, which was marked as Ex.P12, wherein, it is stated that the deceased had sustained injury in an accidental fall. Hence, the petitioner is entitled for suspension of sentence.

5. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor, vehemently opposed the bail petition contending that the motive for the commission of offence and the overt-act of the accused has been categorically spoken by P.Ws.1 & 2. Though the incident was witnessed by Ayyasamy also, but he could not be examined at the time of trial, since he was in abroad. According to the learned Additional Public Prosecutor, the prosecution has proved the charge against the accused beyond reasonable doubt and hence, the petitioner is not entitled for any indulgence of this Court.

6. Heard the rival submissions made by both sides and perused the materials available on record.

7. In the matter on hand, it is not in dispute that the petitioner is the cousin brother of the deceased and there was no enmity between the deceased and the accused, the petitioner herein. It is



alleged by the prosecution that the deceased was using a tractor owned by one Boopathi who was supporting the rival group in the Panchayat Election, when it was objected and a wordy altercation ensued and the accused assaulted the deceased with stick. From the perusal of the records, it is evident that the accused did not have any intention for causing death of the deceased, but the occurrence had taken place due to sudden provocation. As rightly pointed out by the learned counsel for petitioner that there is a delay of 30 hours in lodging the complaint and in Ex.P.12 it is mentioned that the injuries sustained by accidental fall.

8. In the light of the above fact, we are inclined to grant an order in favour of the petitioner. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment imposed on the petitioner 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, each for a like sum to the satisfaction of the learned Judicial Magistrate, Vilathikulam.
- ii. The petitioner shall report before the learned Judicial Magistrate, Vilathikulam on the first working day of every month at 10.30 a.m., 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 said Court on any other day, as determined by the concerned Court, in lieu of the day on which they would absent.

sd/-

30/03/2021

/ 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 JUDGE,
FIRST ADDITIONAL DISTRICT AND SESSIONS COURT,
THOOTHUKUDI.

2 THE JUDICIAL MAGISTRATE,
VILATHIKULAM.



- 3 DO THROUGH:
THE CHIEF JUDICIAL MAGISTRATE,
THOOTHUKUDI DISTRICT.
- 4 THE INSPECTOR OF POLICE
SURANKUDI POLICE STATION,
THOOTHUKUDI DISTRICT.
- 5 THE SUPERINTENDENT,
CENTRAL PRISON,
PALAYAMKOTTAI.
- 6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. TO M/S.M.S.JEYAKARTHICK, ADVOCATE SR.NO.2729

ORDER
IN
CRL MP (MD) No.928 of 2021
in
CRL.A (MD) .NO.55 of 2021
Date :30/03/2021

NR/PN/SAR-I (01.04.2021) 4P:8C