



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

Monday, the Fourteenth 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.M.P.(MD)Nos.1189 and 1190 of 2021
in
Crl.A.(MD)No.347 of 2020

SANKAR @ SANKAR GANESH

... PETITIONER/ APPELLANT
IN Crl.M.P.(MD)No.1189 of 2021

ESAKKI

... PETITIONER/ APPELLANT
IN Crl.M.P.(MD)No.1190 of 2021

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
RADHAPURAM POLICE STATION,
TIRUNELVELI DISTRICT.
CRIME NO.2 OF 2015.

... RESPONDENT/ RESPONDENT
IN BOTH THE PETITIONS

PRAYER IN Crl.M.P.(MD)No.1189 of 2021:

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the Execution of sentence by granting bail in S.C.No.502 of 2015 dated 12.10.2020 on the file of the IV Additional Sessions Judge, Tirunelveli, Tirunelveli District till the disposal of the Criminal Appeal.

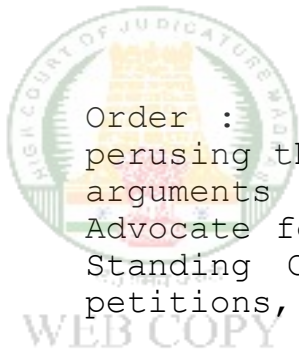
PRAYER IN Crl.M.P.(MD)No.1190 of 2021:

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the Execution of sentence by granting bail in S.C.No.502 of 2015 dated 12.10.2020 on the file of the IV Additional Sessions Judge, Tirunelveli, Tirunelveli District till the disposal of the Criminal Appeal.

PRAYER IN Crl.A.(MD)No.347 of 2020:

To call for the records from the lower Court and to duly set aside the judgment passed by the learned IV Additional Sessions Judge, Tirunelveli, Tirunelveli District in his S.C.No.502 of 2015 dated 12.10.2020.

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



Order : These petitions coming up for orders on this day, upon perusing the petitions filed in support thereof and upon hearing the arguments of Mr.V.KATHIRVELU, Senior Counsel for Mr.K.PRABHU, Advocate for the petitioner in both the petitions and of Mr.S.RAVI, Standing Counsel for Government for the respondent in both the petitions, the court made the following order:-

[Order of the Court was made by **B.PUGALENDHI, J.**]

The petitioners are accused Nos.1 and 2 in S.C.No.502 of 2015 on the file of the learned IV Additional Sessions Judge, Tirunelveli and they were found guilty for the offences under Sections 341, 294(b), 302 and 506(ii) IPC and the trial Court, vide Judgment dated 12.10.2020, convicted and sentenced them as follows:

(i) Under Section 341 IPC, sentenced to undergo one month simple imprisonment each and to pay a fine of Rs.500/- each, in default, to undergo 10 days simple imprisonment each;

(ii) Under Section 294(b) IPC, sentenced to undergo three months simple imprisonment each and to pay a fine of Rs.1,000/- each, in default, one month simple imprisonment each;

(iii) under Section 302 IPC, sentenced to undergo life imprisonment each and to pay a fine of Rs.10,000/- each, in default, to undergo 3 years rigorous imprisonment each;

(iv) Under Section 506(ii) IPC, sentenced to undergo three years rigorous imprisonment each and to pay a fine of Rs.1,000/- each, in default, one year simple imprisonment each and the sentences were ordered to run concurrently.

Challenging the conviction and sentence, the petitioners/accused have come up with this appeal. Pending appeal, they moved these petitions for suspension of sentence.

2. The case of the prosecution is that the first accused's father by name Raj had love affair with the deceased's daughter by name Tamilarasi. They eloped from their home and rented at Chengalpattu, stayed for three years and they returned to Nanguneri. Subsequently, the said Raj committed suicide by consuming poison, due to which, the enmity existed between accused family and deceased family. The photo of Raj and Tamilarasi with image of tying mangal sutra in Raj's cell phone is shown by the 1st accused Sankar to 4th accused Arumugakani and her daughter Maheshwari. Four days prior to the date of occurrence, the deceased went to accused Village Kuttynainarkulam and quarrelled with the 1st accused's mother for demanding of photo image of memory card. On 02.01.2015 the deceased and her son Muthu went to Radhapuram union office and returned from office to Neduvalli Village and when they came near corner of North Street at Neduvaali around at 12.45 p.m., the first and second accused came from opposite side by bike and waylaid them, A2-Esakki

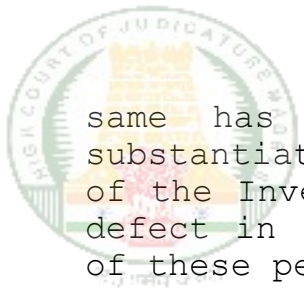


is alleged to have assaulted the deceased on her head, right hand finger and right neck by using sickle. The first accused is alleged to have assaulted the deceased by using sickle on her jaw, neck, right shoulder. The deceased died on the spot. When P.W.1 tried to catch the accused, the accused abused in filthy language, criminally intimidated him and fled away from the scene. Immediately after the occurrence, P.W.1 went to police station and lodged a written complaint.

3. Mr.V.Kathirvelu, learned Senior Counsel, appearing for the petitioners submitted that except P.W.1, there was no other evidence to substantiate the case of the prosecution and P.W.1 is also a chance witness and therefore, his evidence cannot be relied upon to sustain the conviction. P.W.1 and P.W.7 are brother and sister and P.W.1 is the son of the deceased. P.W.7 is said to have eloped with Al's father and out of which, it appears that there is a motive between the accused and the deceased. The deceased was working as a Noon-meal Organizer at Thisaiyanvillai. P.W.1 (deceased's son) was also residing at Thisaiyanvillai and he was also working in TVS company and the occurrence had taken place at Radhapuram, which is 30 kms away from Thisaiyanvillai. The case of the prosecution is that the deceased went to Radhapuram to attend an official meeting and when she was on her way, she was killed by the petitioners/accused. P.W.1 is said to have accompanied the deceased for the purpose of obtaining birth certificate to his daughter. The prosecution has not established any material as to whether PW1 was on leave on the date of occurrence or whether he was working in his office or whether he really accompanied the deceased for the purpose of obtaining birth certificate.

4. Apart from that, the learned Senior Counsel appearing for the petitioners has also pointed out that the Investigating Officer has recovered a pair of male chappals apart from the chappals of the deceased from the place of occurrence. But, the prosecution has failed to fix the pair of chappals either with the accused or with the witness. He further submitted that as per the evidence of P.W.1, the deceased used to carry a cell phone in her hand bag. The hand bag of the deceased was recovered by the Investigating Officer from the place of occurrence, however, the cell phone of the deceased has not been recovered. He also pointed out that there was a delay in sending the FIR to the court. The occurrence had been reported at about 1.30 hrs. on the date of occurrence, but, the printed FIR reached the Judicial Magistrate Court with the delay of 6 ½ hrs. Hence, he prayed for suspension of sentence.

5. Per contra, learned Standing Counsel for Government appearing for the respondent submitted that this is a case of eye-witness and P.W.1 accompanied the deceased on the date of occurrence and he has witnessed the occurrence and also stated about the occurrence. Even if there is any document that he accompanied his



same has not been collected by the Investigating Agency to substantiate the prosecution case, it is only a lacuna on the part of the Investigating Agency, which cannot be considered as material defect in favour of the defence. However, he prayed for dismissal of these petitions.

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6. This Court paid its anxious consideration to the rival submissions made.

7. This is a case of eye witness and P.W.1 is the only eye witness in favour of the prosecution. P.W.1 is the son of the deceased, who is also working in a Private Company at Thisayanvillai and he is said to have accompanied his mother, who went to Radhapuram to attend an official meeting on the date of occurrence. As per the case of the prosecution, the official meeting was scheduled at Radhapuram on the date of occurrence at 2.30 p.m. However, the occurrence had taken place at 12.45 p.m. P.W.1, who is said to have accompanied his mother for the purpose of obtaining a birth certificate to his daughter, is said to have witnessed the occurrence, but the same was not substantiated by any material document. As pointed out by the learned Senior Counsel appearing for the petitioners, the Investigating Agency neither collected any material as to whether P.W.1 was on leave on the date of occurrence nor was he working in his office on the date of occurrence. Further, the prosecution has not collected any material to substantiate that on the date of occurrence, P.W.1 has accompanied his mother only for the purpose of obtaining birth certificate to his daughter. Apart from that, there was a delay of 6 ½ hrs. in FIR reaching the Court. The learned Senior Counsel appearing for the petitioners has also raised some points with regard to the unidentified male chappals, which have been recovered from the place of occurrence. Since there are some arguable points which can be considered only at the time of final hearing, we are inclined to consider these applications for suspension of sentence pending the appeal.

8. Accordingly, these criminal miscellaneous petitions are allowed and the substantive sentence of imprisonment imposed on the petitioners is suspended, subject to the following conditions:

- i. The petitioners are directed to be enlarged on bail on executing a bond for Rs.10,000/- (Rupees ten thousand only) each, with two sureties, each for a like sum to the satisfaction of the learned Judicial Magistrate, Valliyoor.
- ii. The petitioners shall report before the learned Judicial Magistrate, Valliyoor, on the first working day of every English Calender month at 10.30 a.m., until further orders.



iii. On any particular date, if the petitioners are not able to appear, leave is granted to the petitioners 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/-
14/06/2021

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

ORDER IN
Crl.M.P.(MD)Nos.1189 and 1190 of 2021
in Crl.A.(MD)No.347 of 2020
Date :14/06/2021

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