



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

Thursday, the Fourth 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.1186 of 2021
in
Crl.A.(MD) No.339 of 2020

VENKADESH

... PETITIONER/ APPELLANT

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
TIRUMANGALAM TALUK POLICE STATION,
MADURAI DISTRICT.
CRIME NO.301/2015.

... RESPONDENT/ 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 imposed by the IVth Additional District Sessions Court, Madurai in S.C.No.508 of 2016 in 14.10.2020 as against the Petitioner pending disposal of the Criminal Appeal.

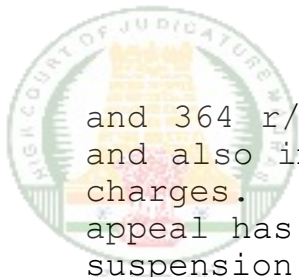
Prayer in Crl.A.(MD) No.339 of 2020:

To set aside the conviction and sentence imposed by the IVth Additional District Sessions Court, Madurai in S.C.No.508 of 2016 on 14.10.2020 and allow this Criminal Appeal.

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.M.JOTHI BASU, Advocate for the petitioner and of Mr.R.ANANDHARAJ, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

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

Totally, 5 accused were tried before the IV Additional District Judge, Madurai in S.C.No.508 of 2016 for the offences punishable under Sections 109 r/w 302 IPC, 120(b) r/w 302 IPC, 341 r/w 34 IPC, 302 r/w 34 IPC and 364 r/w 34 IPC. After trial, the learned Sessions Judge convicted the accused 1, 3 and 4 for the charges under Sections 120(b) r/w 302 IPC, 341 r/w 34 IPC, 302 r/w 34 IPC



and 364 r/w 34 IPC and sentenced them to undergo life imprisonment and also imposed fine. Accused 2 and 5 were acquitted from all the charges. Challenging the conviction and sentence, the present appeal has been filed by the accused No.4. Pending appeal, he seeks suspension of sentence.

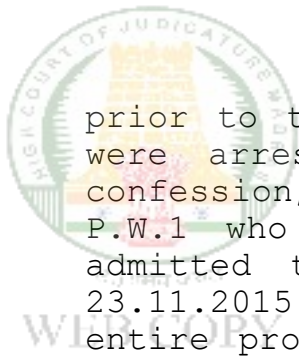
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2.The case of the prosecution is that the deceased Ramanathan @ Ranjith is the son of P.W.1 and brother of P.W.2. A5 is the wife of the deceased. A1 is the son of A2 and A3 and A4 are the friends of A1. It is the further case of the prosecution that A1 developed illicit intimacy with A5, which was objected by the deceased Ramanathan @ Ranjith. While so, on 18.11.2015 at about 03.30 p.m, A1 and A5 conspired with other accused to eliminate the deceased. In pursuance thereof, on 22.11.2015 at 10.00 p.m, when the deceased was riding his motorcycle near Pandian Nagar Railway Gate, A1 to A4 intercepted him and A1 attacked the deceased with iron rod. A2 caught-hold of the deceased and A3 and A4 strangled the deceased and thereafter, the deceased was taken in a TATA ACE bearing reg.No.TN-58-Z-6333 along with his motorcycle and they disposed the body at Vadakarrai Colony Oorani. The incident is said to have been witnessed by P.W.1 to P.W.3.

3.Before the Trial Court, in order to establish the charges against the accused, the prosecution examined 20 witnesses and produced 28 documents as exhibits and marked 13 documents as material objects. The trial Court on appreciation of evidence held that the prosecution has proved the charges against A1, A3 and A4 and convicted and sentenced them as stated supra.

4.The learned counsel for the petitioner Mr.M.Jothi Basu would argue that though the prosecution cited P.W.1 to P.W.3 as eyewitnesses to the occurrence, P.W.3 did not support the case of the prosecution and he was treated as hostile. It is also contended that P.Ws.1 and 2 would not have been present in the scene of occurrence and their evidence is untrustworthy. He further added that P.W.1 has lodged complaint (Ex.P.1) and the same was registered by P.W.19, Sub-Inspector of Police. Though the occurrence is said to have taken place at 10.00 p.m on 22.11.2015, the complaint was lodged only at 13.00 hours on 23.11.2015. According to the learned counsel, no explanation has been offered by the prosecution for lodging of the complaint belatedly. It is also contended that if the P.W.1 and P.W.2 had seen the occurrence as per prosecution, there was no necessity for the Investigating Officer to seek assistance of the sniffer dog lifting the finger prints from the material objects.

5.It is further submitted that the evidence of P.W.6, who is a scavenger would show that he saw the body at 07.30 a.m on 22.11.2015, but as per prosecution, the occurrence had taken place at 10.00 p.m on 22.11.2015. P.W.12, Doctor, who conducted



prior to the occurrence. Further as per prosecution, the accused were arrested at 01.30 p.m on 24.11.2015 and based on their confession, the motorcycle used by the deceased was recovered. But P.W.1 who is the father of the deceased, in his evidence has admitted that he saw the motorcycle at the police station on 23.11.2015. It is the submission of the learned counsel that the entire prosecution story is unbelievable. He would further state that the co-accused Nos.1 & 3 were granted suspension of sentence by this Court in Crl.M.P(MD)No.7796 of 2020 in Crl.A(MD)No.386 of 2020, dated 29.01.2021.

6.Per contra, the learned Additional Public Prosecutor Mr.R.Anandharaj opposed the application contending that the prosecution succeeded in proving the case through eyewitnesses P.W.1 and P.W.2. It is further submitted that the prosecution has proved charges against the petitioners beyond reasonable doubt and hence, they are not entitled for suspension of sentence and he prayed for dismissal of the petition.

7.In the matter on hand, it is the case of the prosecution that the occurrence had taken place at 10.00 p.m on 22.11.2015. Admittedly, the complaint was preferred only at 01.00 p.m on 23.11.2015 i.e., with the delay of 15 hours. The evidence of P.W.1 and P.W.2 would show that they saw the incident at 10.00 p.m at 22.11.2015, in which the deceased was assaulted with iron rod and after body was taken by the accused in TATA ACE vehicle, they searched some time and thereafter, they went to their house and after sleeping over night, they started to search the deceased only at 08.30 a.m at 23.11.2015. This conduct of P.W.1 and P.W.2 is unnatural. If the witnesses saw the occurrence, in the natural course, they would have given complaint on the same day night. Further, the Investigating Officer has admitted in his evidence that sniffer dog was pressed into service and they also lifted finger print from the TATA ACE vehicle.

8.From the above arguments of the learned counsel for the petitioner, we could see that there are arguable points available to the accused in this case. Therefore, we are of the opinion that the petitioner 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 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 IV Additional District and Sessions Court, Madurai.

ii. The sureties shall affix their photographs and



iii. The petitioner shall appear before the IV Additional District & Sessions Court, Madurai daily at 10.30 a.m, 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 Judicial Magistrate, Thirumangalam on any other day, as determined by the said Court, in lieu of the day on which they would absent.

sd/-
04/03/2021

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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 DISTRICT AND SESSIONS JUDGE, MADURAI.

2 THE JUDICIAL MAGISTRATE, THIRUMANGALAM.

3 DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
MADURAI DISTRICT.

4 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

5 THE INSPECTOR OF POLICE
TIRUMANGALAM TALUK POLICE STATION, MADURAI DISTRICT.

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

+1CC to M/s.G.M.LAW OFFICE, Advocate (SR-1799[I] dated 05/03/2021)

ORDER IN
CRL MP(MD) No.1186 of 2021 in
Crl.A.(MD) No.339 of 2020
Date :04/03/2021

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MS/VR/SAR-3/10.03.2021/4P.8C

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