



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

Friday, the Nineteenth 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.1279 of 2021
in
Crl.A. (MD) No.231 of 2019

VISWANATH

...APPELLANT/ ACCUSED

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
TAMIL UNIVERSITY POLICE STATION,
THANJAVUR DISTRICT.
CRIME NO.177 OF 2017.

... 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 in S.C.No.183 of 2018 dated 22.04.2019 on the file of 1st Additional District Judge(PCR) Thanjavur and enlarge the petitioner on bail pending disposal of the criminal appeal.

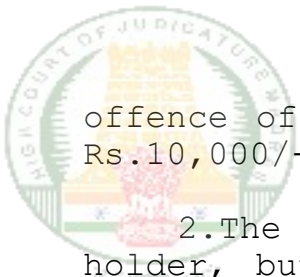
Prayer in Crl.A. (MD) No.231 of 2019:

To set aside the conviction and sentence imposed on the appellants by court of 1st Additional District Judge cum PCR Judge, Thanjavur in S.C.No.183 of 2018 by judgment dated 22.04.2019, 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 Mr.VEERAKATHIRAVAN, Senior Counsel for M/S.VEERA ASSOCIATES 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.**]

The sole accused in S.C.No.183/2018 was tried for the offence punishable under Sections 302 and 201 of IPC for causing death of one Kishore and concealing his body. He was convicted for both the charges and sentenced to undergo life imprisonment with fine for the



offence of 302 IPC and 7 years rigorous imprisonment with fine of Rs.10,000/- for the offence of 201 IPC.

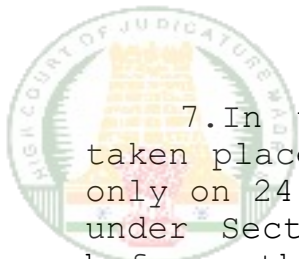
2.The case of the prosecution is that the accused was a Diploma holder, but is unemployed. Both the accused and the deceased are residing in the same area and they are known to each other. On 23.09.2017 at 05.30 p.m, the deceased was playing along with his friends, who were examined P.Ws.3 to 7 in a ground near Varasithi Vinayahar Temple and at about 06.30 p.m, they were playing hide and seek game. At that time, the accused was found standing near compound wall and smoking cigarette. The further case of the prosecution is that the deceased Kishore hide behind the accused, which was objected by him and the deceased abused him in filthy language. Annoyed over the same, the accused strangulated the deceased, thereby, caused his death and to screen the evidence, buried the body in a vacant plot.

3.The prosecution, in order to prove the charges against the accused, examined 21 witnesses and marked 23 documents and M.Os.1 to 7. The Trial Court, on appreciation of evidence adduced by the prosecution, found him guilty and convicted and sentenced him as stated supra. Challenging the same, the present appeal has been filed. Pending appeal, he seeks suspension of sentence.

4.Mr.Veerakathiravan, learned Senior Counsel appearing for the petitioner would argue that the prosecution relied on the circumstantial evidence to prove the charges against the petitioner, but the circumstantial evidence relied on by the prosecution has not been established before the trial Court. According to the learned Senior Counsel, there are material contradictions in the evidence of the prosecution witnesses, which shows their evidence is false. Though the prosecution examined 21 witnesses, the accused was found guilty mainly on the evidence of P.W.11 and P.W.12. It is further contended that the evidence of P.Ws.11 and 12 is highly doubtful and their statements reached the Court after 5 days i.e., 26.09.2017. That apart, contradiction in the evidence of witnesses with regard to exhuming the body of the deceased. The learned senior counsel has drawn the attention of this Court to the evidence in support of his contention. It is further contended that the owners of the plot were also not examined by the prosecution. Hence, the petitioner is entitled for suspension of sentence.

5.Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor appearing for the State vehemently opposed this petition contending that the prosecution has established the case against the accused beyond reasonable doubt and hence, he is not entitled for any relief in this petition.

6.Heard the rival submission of both the counsels and perused the materials available on records.



7. In the present case, the occurrence is said to have been taken place on 23.09.2017 at 05.30 p.m, but the complaint was given only on 24.09.2017 at 07.30 a.m. The case was originally registered under Section 174 Cr.P.C. The accused is said to have appeared before the Village Administrative Officer (P.W.12) and gave statement and on that basis, the body is said to have been recovered. P.W.11 speaks about the last seen theory. Though he stated that he saw the accused along with the deceased on 23.09.2017, he was examined by the police only on 26.09.2017 and his statement reached the Magistrate Court only after 5 days. P.W.14 would say that the body was recovered from plot No.42. P.W.19 Sub-Inspector of Police deposed that the body was found in plot No.250 and in the mahazer also, it is stated that the body was recovered at plot No.250. Furthermore, the Investigating Officer admitted that he did not examine the owners of the plot and that the statement of P.W.1 to P.W.14 reached the Court on 05.02.2018.

8. Considering the above facts, 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 Judicial Magistrate No.2, Trichy.

ii. The petitioner shall appear before the committal Court on every Monday 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 committal Court on any other day, as determined by the said Court, in lieu of the day on which they would absent.

sd/-
19/03/2021

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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

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



TO

1 THE 1ST ADDITIONAL DISTRICT JUDGE (PCR),
THANJAVUR.

2 THE JUDICIAL MAGISTRATE NO.2, TRICHY.

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

4 THE SUPERINTENDENT, CENTRAL PRISON,
TRICHY.

5 THE INSPECTOR OF POLICE
TAMIL UNIVERSITY POLICE STATION,
THANJAVUR DISTRICT.

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

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-2337[I] dated
22/03/2021)

ORDER

IN

CRL MP (MD) No.1279 of 2021

IN CrI.A. (MD) No.231 of 2019

Date :19/03/2021

SKN

MS/VR/SAR-4/01.04.2021/4P.8C