



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

Monday, the Eleventh day of January 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.3549 of 2020
IN CRL A(MD) No.222 of 2020

GUNESEKARAN

... PETITIONER/ APPELLANT/
SOLE ACCUSED

-Vs-

STATE REP.BY
THE INSPECTOR OF POLICE
ANDIPATTY POLICE STATION,
THENI DISTRICT.
IN CRIME NO.204 OF 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 on the Petitioner/Appellant/Accused in S.C.No.4 of 2016 dated 25.11.2019 on the file of the learned Additional District Court (Fast Track Court) Theni and enlarge the petitioner on bail pending disposal of the Appeal.

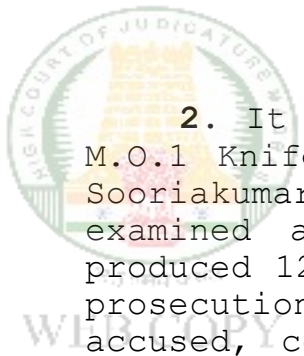
PRAYER IN CRL A(MD) No.222 of 2020:

To call for the records and and set aside the order of conviction and sentence passed in S.C.No.4 of 2016 dated 25.11.2019 on the file of the learned Additional District Court (Fast Track Court) Theni and allow this appeal and acquit the Appellant/ Accused from the charge leveled against them.

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.G.KARUPPASAMY PANDIAN, 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.**]

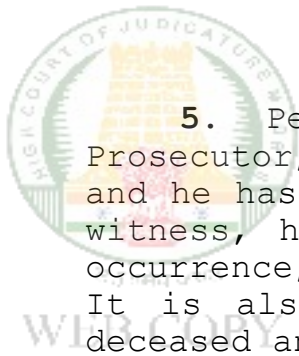
The sole accused in S.C.No.4 of 2016, on the file of the Additional District and Sessions Court (Fast Track Court), Theni, was charged for the offence punishable under Section 302 I.P.C.



2. It is alleged that on 23.04.2015, at about 08.15 p.m., with M.O.1 Knife, the accused inflicted fatal injuries on the deceased Sooriakumari. In order to prove the said charge, the prosecution examined as many as 34 witnesses and marked 18 documents and produced 12 material objects. The Trial Court having held that the prosecution has succeed in proving the charge framed against the accused, convicted and sentenced him to suffer life imprisonment. Challenging the said conviction and sentence, he has filed the appeal and pending appeal, he has filed the present application for suspension of sentence.

3. The case of the prosecution is that P.W.1 - Jeeva is the brother of the deceased Sooriakumari. The deceased was married to one Kannan about ten years prior to the occurrence and during the lawful wedlock, they were blessed with two children. It is also the case of the prosecution that the deceased borrowed money from the accused for her family necessity and in the course of transaction, they developed illicit relationship. So, the accused, who was doing business in Mumbai, insisted the deceased to accompany him. It is also stated that the wife of the accused lodged a complaint with Batlagundu Police Station, where a compromise was reached between the accused and the deceased. While so, on 23.04.2015, the deceased and P.W.1 had gone to meet Kannan (P.W.3), who is an Astrologer. The accused also came there and with M.O.1 Knife attacked the deceased and thereby, she died. The prosecution examined P.W.1 as eyewitness to the occurrence. P.W.3 is said to have seen the accused going away from the scene of occurrence after attacking the deceased.

4. Mr.G.Karuppasamy Pandian, learned counsel for the petitioner, would argue that the prosecution projected P.Ws.1 and 3 as eyewitness to the occurrence, but their evidence is unnatural and unbelievable. It is the submission of the learned counsel for the petitioner that P.W.1 deposed that the deceased was taken to Hospital by him along with P.W.3. But, P.W.3 has stated that P.W.1 alone had taken the deceased to the Hospital. He further added that though P.W.1 is the brother of the deceased, admittedly, he did not intervene to rescue the deceased, which shows that he was not present in the scene of occurrence. Further, the Investigating Officer has admitted in his cross-examination that the deceased was carried to the Hospital by one Kaviarasu, but he was not examined and the copy of Accident Register was also not produced by the prosecution. It is further submitted that as per the prosecution case, the accused was arrested on 24.04.2015 at 04.00 p.m., and in pursuance of his confession, M.O.1 Knife was recovered, however, P.Ws.3 and 9 have deposed that they saw the accused on 24.04.2015 at 11.00 a.m. and hence, the arrest of the accused and recovery of M.O.1 Knife creates doubt over the prosecution case.



5. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor, would argue that P.W.1 is the brother of the deceased and he has spoken about the incident. P.W.3, who is an independent witness, has stated that he saw the accused immediately after the occurrence, which shows that the deceased had committed the offence. It is also stated that the accused had repeatedly attacked the deceased and hence, no mercy can be shown on the accused.

6. In reply, the learned counsel for the petitioner would state that as per the prosecution case, the accused was holding M.O.1 Knife, by which, he attacked the deceased. But, P.W.3 has stated that M.O.1 belongs to him and it was taken by the accused to commit the offence, which shows that the accused did not have any intention to commit the offence and he cannot be convicted under Section 302 I.P.C.

7. Heard the rival submissions and perused the materials available on record.

8. In the matter on hand, the occurrence is said to have taken place on 23.04.2015 at 08.15 p.m. It is the case of the prosecution that the deceased borrowed money from the accused and in the course of the said transaction, illicit intimacy developed between them and he was insisting the deceased to come to Mumbai. When the deceased refused to accept the same, the accused annoyed over the act of the deceased and attacked her with M.O.1 - Knife. A perusal of the evidence of P.Ws.1, 3 and 9 would reveal that there are material contradictions in their evidence with regard to carrying the deceased to the Hospital and also arrest of the accused. Furthermore, the prosecution has failed to produce a copy of Accident Register for the reasons best known to them. Taking note of the above facts, we are inclined to suspend the sentence imposed on the accused.

9. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment alone imposed on the accused / petitioner herein 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 learned Judicial Magistrate, Andipatty.

ii. The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Committal Court may obtain a copy of their Aadhar card or Bank passbook to ensure their identity.



iii. The petitioner shall appear before the learned Judicial Magistrate Andipatty, at 10.30 a.m. on the first working day of every English Calendar month, 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 Trial Court on any other day, as determined by the Trial Court, in lieu of the day on which they would absent.

sd/-
11/01/2021

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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 ADDITIONAL DISTRICT JUDGE,
(FAST TRACK COURT), THENI.
- 2 THE JUDICIAL MAGISTRATE, ANDIPATTY.
- 3 DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THENI DISTRICT.
- 4 THE INSPECTOR OF POLICE
ANDIPATTY POLICE STATION,
THENI DISTRICT.
- 5 THE SUPERINTENDENT, CENTRAL PRISON,
MADURAI.
- 6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER IN
CRL MP(MD) No.3549 of 2020
IN CRL A(MD) No.222 of 2020
Date :11/01/2021

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<https://hdcviceservices.in/cases/MS/EN/GR/DOV/1/1/2021/4P.7C>