



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

Tuesday, the Fifteenth 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 MP(MD) No.1332 of 2021
in
CRL A(MD)No.175 of 2020

MUTHUKUMAR @ KUMAR

... APPELLANT/SOLE ACCUSED

Vs

THE INSPECTOR OF POLICE,
SIPCOT POLICE STATION,
THOOTHUKUDI DISTRICT.
CRIME NO.214 OF 2016

... 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 petitioner by the Judgment dated 15.10.2019 made in SC.No.149 of 2018 on the file of the Principal Sessions Judge, Thoothukudi and grant bail to the petitioner.

Prayer in CRL A(MD)No.175 of 2020:

To call for the records pertaining to the Judgment Dated 15.10.2019 made in SC.No.149 of 2018 on the file of the Principal Sessions Judge, Thoothukudi and set aside the same as illegal.

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.R.VINOTH BHARATHI, Advocate for the petitioner and of Mr.S.RAVI, Standing Counsel for Government of Tamil Nadu on behalf of the Respondent, the Court made the following order:-

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

The petitioner is the sole accused in Sessions Case No.149 of 2018 on the file of the Principal Sessions Judge, Tuticorin and he was tried for commission of murder of one Veeramani on 24.07.2016. The trial Court, which found him guilty for the offence under Section 302 IPC, sentenced him to life imprisonment with a fine of

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



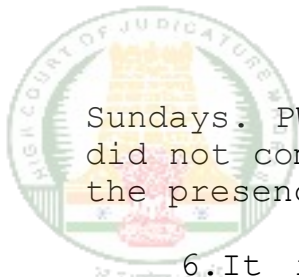
Rs.1,000/-, in default to undergo rigorous imprisonment for one year. Challenging the said conviction and sentence, the present appeal has been preferred and pending appeal, the petitioner seeks suspension of sentence.

2.The case of the prosecution is that the deceased Veeramani was working as a lorry cleaner at Thoothukudi and also residing therein. The accused was working in a mechanic shop at the same place. It is the further case of the prosecution that both accused and deceased were friends and they used to consume alcohol together and in an intoxicated mood they used to quarrel with each other, while so, on 24.07.2016 between 6.30 pm and 8.30 pm they consumed liquor and thereafter a wordy quarrel arose between them. However, at the intervention of PW3 / the owner of the workshop, the matter was compromised and they left the place. Thereafter when the deceased Veeramani was sleeping before the APC college bus stop, the accused is said to have assaulted him with a hammer and caused his death.

3.The learned Counsel appearing for the petitioner Mr.R.Vinoth Bharathi would urge that the prosecution relies only on the circumstantial evidence and there is no eye witness to the occurrence. It is the submission of the learned Counsel for the petitioner that the prosecution failed to prove all the circumstances against the accused and there are material contradictions in the evidence of PW3 and PW4. According to the learned Counsel, the evidence of PW4 would establish that PW3 would not have been present in the scene of occurrence on 24.07.2016. That apart, there is an unexplained delay in sending the FIR to the Court. Hence, the petitioner is entitled for suspension of sentence.

4.Per contra, Mr.S.Ravi, learned Standing Counsel appearing for the State would argue that though the case was registered based on the complaint of PW1 on 25.07.2016 at 8.00 am, the name of the accused was not found place in the FIR. On 30.07.2016, the accused surrendered before the Village Administrative Officer / PW5 and gave extra judicial confession. In pursuance thereof, blood stained cloths of the accused were recovered and the same was corroborated by the evidence of PW3 and PW4. The delay in sending the FIR to the Court has been properly explained by PW12. He further added that the prosecution proved its case beyond reasonable doubt.

5.In the matter on hand, it is not in dispute that the petitioner / accused and the deceased Veeramani were working at Thoothukudi and they were friends prior to the occurrence. It is the case of the prosecution that the deceased and the accused were consuming liquor together and quarrels ensued between them frequently. It is the further case of the prosecution that on 24.07.2016 a quarrel arose between the accused and the deceased from 6.30pm and the same was compromised by PW3. A perusal of the



Sundays. PW4 had deposed that on 24.07.2016 falls on Sunday and PW3 did not come to the workshop. PW4 was a watchman of the workshop. So the presence of PW3 at the relevant point of time creates a doubt.

6.It is further seen that though the case was registered on 8.00am on 25.07.2016, the First Information Report reached the court only at 3.40 pm on 25.07.2016. PW12 in his evidence has admitted that the distance between the Police station and the Court is ten kilometres and it could have reached within half an hour. But we find there is a delay of 7 hours in the FIR reaching the Court. PW12 has stated that since there was some problem in the bike the delay has occurred. Whether the evidence of PW3, PW4 and PW12 can be relied on to sustain the conviction can be decided at the time of final disposal of the appeal. We are of the *prima facie* opinion that the incident could have occurred due to sudden quarrel between the accused and the deceased. The accused has been incarceration for a period of two years.

7.In the light of the above, we are inclined to suspend the sentence. 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, of whom, one should be a blood related surety, each for a like sum to the satisfaction of the learned Principal Sessions Judge, Thoothukudi.
- ii. The petitioner shall report before the trial Court at 10.30 a.m. on the first working day of every month, until further orders.
- iii. On any particular date, if the petitioner is not able to appear, leave is granted to him to file application under Section 317 Cr.P.C. and appear before the Committal Court on any other day, as determined by the Committal Court, in lieu of the day on which he would absent.

sd/-
15/06/2021

/ TRUE COPY /

/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO

1.THE PRINCIPAL SESSIONS JUDGE,
THOOTHUKUDI.

2.THE SUPERINTEDENT,
CENTRAL PRISON, PALAYAMKOTTAI.

3.THE INSPECTOR OF POLICE,
SIPCOT POLICE STATION, THOOTHUKUDI DISTRICT.

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

ORDER
IN
CRL MP (MD) No.1332 of 2021
in
CRL A (MD) No.175 of 2020
Date :15/06/2021

dsk
AE/AKM/SAR-1/18.06.2021/4P/5C