



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

Monday, the Twelfth day of July 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.1598 of 2021

IN

CRL A(MD)No.93 of 2021

SHEK ABDULLAH

... APPELLANT/SOLE ACCUSED

Vs

THE STATE REP. BY
THE INSPECTOR OF POLICE,
S.S.COLONY POLICE STATION,
MADURAI DISTRICT.
CRIME No. 794/2018.

... 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 against the Petitioner in S.C.No.358/2019 dated 01.02.2021 on the file of the 1 Additional District and Sessions Judge, Madurai and enlarge the Petitioner on bail pending disposal of Appeal.

Prayer in CRL A(MD)No.93 of 2021:

To call for the records relating to the judgment in S.C.No.358/2019 dated 01.02.2021 on the file of the 1 Additional District and Sessions Judge, Madurai set aside the same 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.SUBASH BABU.M., Advocate for the petitioner and of Mr.S.RAVI, Standing Counsel for State Government on behalf of the Respondent, the Court made the following order:-

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

The petitioner was tried for the charges under Sections 294(b) (2 counts) and 302 IPC and was found guilty by the 1 Additional District and Sessions Judge, Madurai in S.C.No.358 of 2019 and sentenced to undergo life imprisonment for murder, while he was



acquitted for the charge under Section 294(b) (2 counts) IPC. Challenging the said conviction and sentence, the present appeal has been filed. Pending appeal, he seeks suspension of sentence.

2.The story of the prosecution is that the accused is a resident at D.No.K.10, while the deceased Ramesh was residing at D.No.K.11 in Ellies Nagar Housing Board Colony. It is alleged that the deceased Ramesh was in habit of hearing Radio programmes with louder noise, which was being objected by the accused. On account of this, wordy altercation arose between them on many occasions. It is the further case of the prosecution that the deceased used to ask the accused to get cigarette for him, but the accused rejected the request, hence, he was scolded many times. While so, on 07.11.2018 at 04.30 p.m, when P.W.1, who is the wife of the deceased, was in the ground floor, her husband was climbing to the upstairs and he saw the accused sitting in the entrance of his house. The deceased scolded the accused using filthy language, which was also replied by the accused in the same language. Thereafter, the accused assaulted the deceased with hands and caused his death.

3.The prosecution to prove the charge against the accused, examined 16 witnesses and marked 9 documents and Mos.1 to 3. In conclusion of trial, the learned Sessions Judge found the accused guilty for the charge under Section 302 IPC and sentenced him as mentioned above.

4.The learned counsel appearing for the petitioner Mr.M.Subash Babu would submit that though the prosecution has examined P.W.1, P.W.8 and P.W.9 as witnesses to the incident, but P.Ws.8 and 9 have turned hostile and the conviction was made mainly relying upon the evidence of P.W.1. It is further contended that the presence of P.W.1 at the time of occurrence is highly doubtful as there was unexplained delay of 5 hours in lodging the complaint. It is the submission of the learned counsel for the petitioner that the occurrence had taken place at 04.30 p.m on 07.11.2018 and the complaint was lodged only at 09.30 p.m. It is next contended that the prosecution has deliberately suppressed the production of Accident Register. Further, there are material contradictions in the evidence of P.W.1 and P.W.5. It is also stated that admittedly the occurrence had taken place in a sudden provocation and no weapon was used by the accused, which shows that there is no predetermination nor intention to commit murder.

5.Per contra, the learned Standing Counsel appearing for the respondent Mr.S.Ravi argued that P.W.1 has spoken about the incident and there is no materials to disbelieve her testimony. It is further submitted that the deceased was immediately taken to a private hospital and from where, he was referred to the Government hospital and hence, there is no delay in lodging the complaint by P.W.1. It is the submission of the learned Standing Counsel that the prosecution has proved the case beyond reasonable doubt and hence, the petitioner is not entitled for suspension of sentence.



6. We have carefully considered the rival submissions and perused the materials available on record.

7. In the instant case, there is no dispute that the deceased and the petitioner are neighbours and P.W.1, the wife of the deceased has stated that her husband was a drunkard and he used to abuse the accused often and he also insisted the accused to buy cigarette. As rightly pointed out by the learned counsel for the petitioner that the independent witnesses, P.Ws.8 and 9 have not supported the case of the prosecution. We find that there is a delay of 5 hours in lodging the complaint and there are material contradictions in the testimony of P.Ws.1 and 5 with regard to taking the deceased to the hospital. It is an undisputed fact that the accused did not use any weapon and the occurrence took place after wordy altercation arose between the accused and the deceased. P.W.1 herself admitted that her deceased husband is a drunkard and smell of alcohol was found during postmortem.

8. Considering the above aspects, we are of the opinion that the petitioner is entitled for suspension of sentence during pendency of this appeal. Accordingly, this criminal miscellaneous petition is allowed and the substantive sentence of imprisonment imposed on the petitioner alone 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.V, Madurai.
- ii. The petitioner shall appear before the Committal Court at 10.30 a.m. on the first working day of every English Calendar month 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 committal Court, in lieu of the day on which they would absent.

sd/-
12/07/2021

/ TRUE COPY /

/ /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 I ADDITIONAL DISTRICT AND SESSIONS JUDGE,
MADURAI.
 2. DO-THROUGH : THE PRINCIPAL DISTRICT AND SESSIONS JUDGE,
MADURAI DISTRICT.
 3. THE JUDICIAL MAGISTRATE No.V, MADURAI.
 4. DO-THROUGH : THE CHIEF JUDICIAL MAGISTRATE,
MADURAI DISTRICT.
 5. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
 6. THE INSPECTOR OF POLICE,
S.S. COLONY POLICE STATION,
MADURAI DISTRICT.
 7. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.
- + 1 CC TO Mr.M.SUBASH BABU, ADVOCATE IN SR No. 4504

ORDER
IN
CRL MP(MD) No.1598 of 2021 IN
CRL A(MD)No.93 of 2021
Date :12/07/2021

SKN
TE/AKM/SAR-II : 16/07/2021 : 4P/9C