



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Tuesday, the Second 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.1681 of 2020
IN
CRL A(MD) No.43 of 2020

MOHAMED THAHIR

... PETITIONER/APPELLANT

Vs

THE STATE REPRESENTED BY.
THE INSPECTOR OF POLICE
THANJAVUR SOUTH POLICE STATION, THANJAVUR.
(CRIME.NO.219/2018)

... 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 in the conviction of the life Imprisonment along with fine Rs.1000/- default whcih to undergo simple imprisonment for one year and enlarge the petitoner/Appellant on bail in the Judgment in S.C.No.3 of 2019, dated 29.04.2019 on the file of the Principal Sessions Judge, Thanjavur.

Prayer in CRL A(MD)NO.43 OF 2020:

pleased to allow the present Criminal Appeal and acquit the appellant by setting aside the judgment and conviction passed by the Learned Principal Sessions Judge, Thanjavur made in S.C.NO.3 of 2019 dated 29.04.2019 convicting the appellant for the alleged offence U/s.302 of IPC and sentenced him to undergo life imprisonment and imposed a fine of Rs.10000/- and in default to pay the fine, further one year simple imprisonment.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.M.KRISHNAVENI, Advocate for the petitioner and of Mr.R.Anandharaj, Additional Public Prosecutor, on behalf of the Respondent, the court made the following order:-



O R D E R

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

The sole accused in S.C.No.3 of 2019, on the file of the Principal Sessions Court, Thanjavur, was charged for the offence under Sections 302 and 506(i) I.P.C. and after trial, he was acquitted from the charge under Section 506(i) I.P.C. and convicted and sentenced to under go life imprisonment with a fine of Rs.10,000/- for the offence under Section 302 I.P.C. Challenging the conviction and sentence, the present appeal has been filed and pending appeal, he seeks suspension of sentence.

2. The story of the prosecution is that the accused is the father of the deceased Abdul Rahman, Ibrahim (P.W.1), Shabira Banu (P.W.2), Riyas Samsudeen (P.W.5), father-in-law of Jainulabdeen (P.W.3) and husband of Furkath Nisha (P.W.4). The accused has earned huge amount in his business, however he was leading a wayward life and he was having illicit relationship with several ladies. One month prior to the occurrence, the accused is said to have gone out of the house and he was brought to the house and warned by his family members P.Ws.1 to 5. Enraged over the same, on 28.09.2018, at about 05.30 a.m., the accused threw a grinding stone on the head of his own son Abdul Rahman and caused his death.

3. On appreciation of the evidence adduced by the prosecution, the Trial Court came to the conclusion that the prosecution has succeeded in proving the charges of murder and convicted and sentenced him as stated supra.

4. Ms.M.Krishnaveni, learned counsel appearing for the petitioner, would urge that the petitioner is an innocent and he has been falsely roped in this case. She further added that the occurrence is said to have taken place at 05.30 a.m. on 28.09.2018, but, the complaint was lodged only at 11.30 a.m. with a delay of six hours and the delay has not been explained by the prosecution. It is further contended that P.Ws.1 to 5 are not only relatives of the deceased, but they are interested witnesses and their testimony cannot be relied on to convict the petitioner. The motive is very vague and it has not been proved by the prosecution. The learned counsel drew the attention of this Court to the deposition of P.Ws.1 to 5.

5. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor, would argue that the incident is witnessed by P.W.1 and immediately, he lodged the complaint. According to the learned Additional Public Prosecutor, the incident was immediately reported to Jamath and hence, there was a delay in lodging the complaint. It is further contended that all the family members of the accused have deposed against him, which would reveal that he was having illicit



intimacy with other lades and prayed for dismissal of the application.

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

7. In the instant case, it is not in dispute that the accused is the father of the deceased Abdul Rahman. The cross-examination of P.W.1 would reveal that about two weeks prior to the incident i.e. on 14.09.2018, the accused has settled two house-plots in the name of P.W.1 and the deceased Abdul Rahman. In the cross-examination, P.W.1 further admitted that on 04.09.2018, the accused gave Rs.20,00,000/- to his another son Riyas Samsudeen (P.W.5). He also admitted in his cross-examination that the accused was running a Provisional Store, from which he earned huge amount and purchased several properties. The evidence of P.Ws.1 to 5 would show that the accused was having cordial relationship with the family members, but only due to sudden provocation, this incident could have happened. Though P.W.1 is the star witnesses in this case, no proper explanation has been offered for lodging the complaint after six hours. Considering the above aspects, we are inclined to suspend the sentence imposed on the accused.

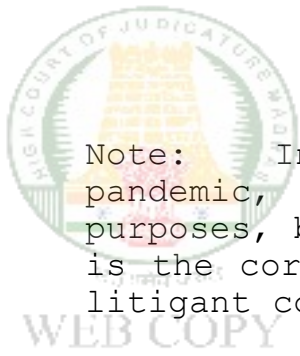
8. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment alone imposed on the accused / petitioner herein is suspended, subject to the following conditions:

- 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, each for a like sum to the satisfaction of the learned Judicial Magistrate No.I, Thanjavur.
- ii. The petitioner shall appear before the learned Judicial Magistrate No.I, Thanjavur, 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/-
02/03/2021

/ 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 PRINCIPAL SESSIONS JUDGE, THANJAVUR.

2.THE JUDICIAL MAGISTRATE NO.I,
THANJAVUR.

3.DO THROUGH:
THE CHIEF JUDICIAL MAGISTRATE,
THANJAVUR AT KUMBAKONAM.

4.THE INSPECTOR OF POLICE
THANJAVUR SOUTH POLICE STATION, THANJAVUR.

5.THE SUPERINTENDENT,
CENTRAL PRISON,
TRICHY.

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

+1. C.C. to M/S.M.KRISHNAVENI Advocate SR.No.1689

ORDER
IN
CRL MP(MD) No.1681 of 2020
IN
CRL A(MD) No.43 of 2020
Date :02/03/2021

NR/PN/SAR-III(10.03.2021) 4P:8C