



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

Tuesday, the Sixteenth 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.2232 of 2021
IN
CRL.A(MD).NO.258 of 2020

MUNIYASAMY @ PON MUNIYASAMY ... APPELLANT/APPELLANT/ACCUSED NO.1

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
NORTH POLICE STATION, TUTICORIN DISTRICT.
(CR.NO.664 OF 2013) ... 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 in Judgment dated 22.01.2020 made in S.C.No.266 of 2015 on the file of the Additional District and Sessions Judge, Thoothukudi and enlarge the petitioner on bail.

PRAYER IN CRL.A(MD).NO.258 of 2020:

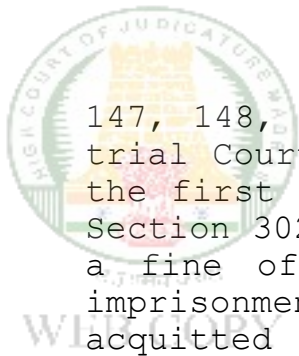
Pleased to call for the judgment dated 22.01.2020 passed in S.C.No.266 of 2015 by the II Additional District and Sessions Court, Tuticorin and set aside the same.

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.V.MALAIYENDRAN, 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 petitioner is the first accused in S.C.No.266 of 2015 on the file of the learned II Additional District and Sessions Judge, Thoothukudi. He was tried for the offences under Sections 120-B,
<https://hcservices.ecourts.gov.in/hcservices/>



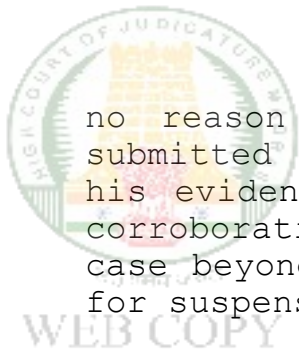
147, 148, 302 read with 34 IPC along with five other accused. The trial Court, having come to the conclusion that the charges against the first and second accused have been proved, convicted them under Section 302 IPC and sentenced them to undergo life imprisonment with a fine of Rs.1,000/-, in default, to undergo six months simple imprisonment. The other accused, namely, A3 to A6, have been acquitted from all the charges. Challenging the conviction and sentence, the first accused has come up with this appeal. Pending appeal, he seeks suspension of sentence.

2. The deceased Balamurugan is the brother-in-law of A1. A2 to A6 are his associates. P.W.1 is the father and P.W.17 is the co-brother of the deceased. The story of the prosecution is that the first accused's sister Muneeswari was married to the deceased about three years prior to the occurrence and there were frequent quarrels between the husband and wife and hence, the said Muneeswari was residing with her parents for some time. It is also the case of the prosecution that later, the said Muneeswari rejoined with her husband. It is alleged that the deceased used to scold his wife Muneeswari and the same was informed to A1. Therefore, all the accused conspired together to eliminate the deceased and thereafter, on 27.10.2013, while the accused Nos.3 to 6 caught hold of the deceased, A1 and A2 assaulted him with knife and thereby caused his death.

3. The prosecution in order to prove the guilt against the accused, examined P.W.1 to P.W.4 and P.W.17 as eye-witness to the incident. However, except P.W.1, others have turned hostile.

4. The learned counsel appearing for the petitioner would argue that the conviction is made mainly on the evidence of P.W.1, since the other eye witnesses did not support the case of the prosecution. According to the learned counsel, the evidence of P.W.1 is unbelievable and unnatural and the testimony of P.W.1 is also not corroborated by other evidence and hence, the evidence of P.W.1 has to be discarded. It is further contended that the occurrence had taken place at 3.15 p.m. on 27.10.2013 and the case was registered at 4.45 p.m. by P.W.13-Sub Inspector of Police, but, the FIR reached the Court only at 10.00 p.m. P.W.13 admitted that the FIR could have reached the Court within 30 minutes, but, the delay of five hours remains unexplained by the prosecution. He further added that the medical evidence is not supporting the case of the prosecution. According to P.W.1, the deceased suffered six injuries, but, Postmortem certificate Ex.P17 shows that the deceased suffered 17 injuries.

5. Per contra, the learned Additional Public Prosecutor appearing for the State vehemently opposed the petition contending that the motive for commission of offence and the overt act attributed to the accused have been categorically deposed by P.W.1. Though other



no reason to disbelieve the evidence of P.W.1. It is further submitted that P.W.17, who attested the complaint has admitted in his evidence. Therefore, it cannot be contended that there is no corroboration of evidence of P.W.1. The prosecution has proved the case beyond reasonable doubt, hence, the petitioner is not entitled for suspension of sentence.

6. In the matter on hand, the relationship of the parties are not seriously disputed. The criminal law was set in motion by filing a complaint by P.W.1 and the same was attested by his son-in-law-P.W.17. P.W.1 would state that the occurrence was also witnessed by his daughter Sridevi, but, she was not examined by the prosecution. The theory of conspiracy has been disbelieved by the prosecution. So, except the evidence of P.W.1, no other evidence is available to speak about the overt act attributed against the accused. As rightly pointed out by the learned counsel for the petitioner, there was a delay of five hours in reaching the FIR to the Court. That apart P.W.14, who conducted autopsy on the dead body of the deceased, have noticed 17 external injuries, which is contrary to the evidence of P.W.1. A cursory reading of evidence would show that the accused had no motive to commit the offence.

7. In the light of the above facts, we are inclined to grant an order in favour of the petitioner. 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 learned Judicial Magistrate No.II, Thoothukudi.

ii. The petitioner shall report before the learned Judicial Magistrate No.II, Thoothukudi, on the first working day of every English Calendar month 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 said Court on any other day, as determined by the concerned Court, in lieu of the day on which they would absent.

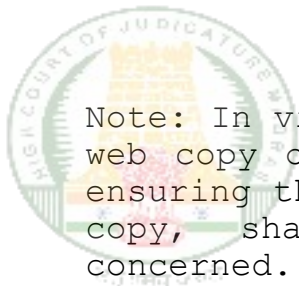
sd/-

16/03/2021

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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.

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- 1 THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE,
THOOTHUKUDI
- 2 THE JUDICIAL MAGISTRATE NO.II,
THOOTHUKUDI.
- 3 DO THROUGH:
THE CHIEF JUDICIAL MAGISTRATE,
THOOTHUKUDI.
- 4 THE INSPECTOR OF POLICE
NORTH POLICE STATION, TUTICORIN DISTRICT.
- 5 THE SUPERINTENDENT,
CENTRAL PRISON,
PALAYAMKOTTAI.
- 6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.2232 of 2021
IN
CRL.A(MD).NO.258 of 2020
Date :16/03/2021

NR/PN/SAR-III(22.03.2021) 4P:7C