



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

Friday, the Ninth day of April 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.2266 of 2021
in
Crl.A.(MD) No.139 of 2021

MOHAN

... APPELLANT/ ACCUSED NO.2

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
SAWYERPURAM POLICE STATION,
THOOTHUKUDI DISTRICT.
CRIME NO.142/2012.

... 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 of imprisonment imposed by the Learned II Additional District and Sessions Judge, Thoothuukudi in S.C No. 308/2016 by the judgment dated 12.02.2021 and enlarge the Petitioner / Appellant on bail pending disposal of the above said Criminal Appeal.

Prayer in Crl.A. (MD) No.139 of 2021:

To call for the records and set aside the judgment and conviction dated 12.02.2021, by the Learned II Additional District and Sessions Judge, Thoothuukudi in S.C No.308/2016 and acquit the Appellant.

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.P.T.RAMESH RAJA, Advocate for Mr.R.PON KARTHIKEYAN Advocate for the petitioner and of Mr.S.CHANDRASEKAR, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

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



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

The petitioner was arrayed as accused No.2 in S.C.No.308 of 2016 on the file of the II Additional District and Sessions Judge, Thoothukudi. He along with one Murugesan was charged for the offence punishable under Sections 341, 302 342 and 302 r/w 34 IPC for causing death of one Ravikumar on 13.11.2012.

2.In order to prove the charges, the prosecution has examined 15 witnesses and marked 16 documents and 10 materials objects. The trial Court on appreciation of the evidence adduced by the prosecution came to the conclusion that the charges against the accused have been proved, convicted and sentenced them to undergo including life imprisonment. Challenging the conviction and sentence, the present appeal has been filed by accused No.2. Pending appeal, he seeks suspension of sentence.

3.The case of the prosecution is that the accused and the deceased Ravikumar were native of Kovangkadu. They were also friends. One month prior to the occurrence the accused and the deceased attended a funeral ceremony of one Appu Nadar. The story of the prosecution is that the deceased was having a liquor bottle, which was broken by accused No.1. Enraged over the act of the accused No.1, the deceased assaulted him. In view of the same, on 13.11.2012 at about 06.30 pm, when the deceased went to a shop to buy cigar, accused No.2 caught hold of the deceased while accused No.1 attacked him with aruval and thereby caused his death. The trial Court has come to the conclusion that the charges against the accused have been proved and convicted and sentenced them as stated above.

4.Mr.P.T.Ramesh, learned Counsel for the petitioner would argue that though the prosecution cited PWs.1,3,4 and 5 as eye witnesses for the occurrence, but their presence at the time of occurrence is highly doubtful. According to the learned Counsel, it looks artificial for PW1 to follow the deceased to witness the occurrence, when he went to buy beedi. It is further submitted that PWs.3 to 5 are said to have witnessed the occurrence standing in front of their respective houses, but in the rough sketch and observation mahazar their houses are not mentioned and the same was also accepted by the investigating officer in his evidence. It is also contended that though the occurrence had taken place at about 06.30 p.m on 13.11.2012, the complaint was lodged only at 08.30 p.m and the FIR reached the Judicial Magistrate Court concerned at 05.45 am on the next day. It is also submitted that the delay in lodging the complaint as well as the FIR reaching the Court has not been properly explained by the prosecution. He would further add that the Doctor [PW14], who conducted postmortem has categorically stated that the deceased had sustained ten injuries and these injuries are not possible by a single weapon and while a person catching hold of



the deceased, there is every possibility for him also to sustain injuries and hence, the petitioner is entitled for suspension of sentence.

5.Per contra, Mr.S.Chandrasekar, learned Additional Public Prosecutor would vehemently oppose this petition contending that the incident has been witnessed by PWs.1, 3, 4 and 5 and they have categorically supported the case of the prosecution and there is no reason to discard their evidence. He further contended that the Head Constable [PW10] has initially taken the FIR to the jurisdictional Magistrate, namely, the Judicial Magistrate, Thoothukudi, where he found that the Magistrate was on leave. Thereafter, he produced the FIR to the Judicial Magistrate, Kovilpatti, who was the in charge Magistrate and thus, the delay has been properly explained by the prosecution.

6.Heard the rival submission of the learned counsel and perused the materials available on records.

7.In the case on hand, it is the case of the prosecution that one month prior to the occurrence there was a quarrel between accused No.1 and the deceased, in which the deceased attacked accused No.1. According to the prosecution, this is the motive for the incident, which had taken place on 13.11.2012. From a perusal of the evidence of Pws1 and 3 to 5, it is consistently stated that the petitioner caught hold of the deceased to facilitate A-1, to assault the deceased. It appears that the petitioner / A-2 did not have any motive for the commission of offence.

8.Although the learned Counsel for the petitioner pointed out some discrepancies in the prosecution case, however, this Court taking note of the overt act attributed to the petitioner is 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 each for a like-sum to the satisfaction of the Judicial Magistrate No.1, Thoothukudi.

ii.The petitioner shall appear before the Ramanathapuram Bazaar Police Station, Ramanathapuram on every Monday at 10.30 a.m., until further orders; and

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 said Court, in lieu of the day on which he would be absent.

sd/-
09/04/2021

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

TO

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

+1 CC to M/s.R.PONKARTHIKEYAN, Advocate (SR-3040[I] dated
09/04/2021)

ORDER
IN
CRL MP(MD) No.2266 of 2021
IN Cr1.A.(MD) No.139 of 2021
Date :09/04/2021

DSK
MS/VR/SAR-4/15.04.2021/4P.9C