



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

Tuesday, the Twentieth 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.3005 of 2021
in
CRL A(MD)No.188 of 2021

VEERAPPAN

... PETITIONER/ APPELLANT

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
SAKKOTTAI POLICE STATION,
SIVAGANGAI DISTRICT.
CRIME NO.182/2012

... 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 imposed on the petitioner by the judgment passed in S.C.No.30 of 2014 dated 27/09/2019 on the file of the Learned Principal Sessions Judge, Sivagangai and grant bail to the petitioner pending disposal of the Appeal.

PRAYER IN CRL A(MD)No.188 of 2021:

To call for the records and set aside the judgment and sentence passed in Sessions Case No.30 of 2014 dated 27.09.2019 on the file of the Principal Sessions Judge, Sivagangai convicting the appellant for the offence under section 341 and 302 of IPC and sentenced to undergo simple Imprisonment for One month and to pay a fine of Rs.1000/- in default to undergo and to undergo the imprisonment for life imprisonment and imposed a fine of Rs.1000/- in default to undergo R.I. For 3 months for the offence under section 302 of I.P.C.

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.V.KARUNA, Advocate for the petitioner and of Mr.S.RAVI, Standing Counsel for the State on behalf of the Respondent, the court made the following order:-



[Order of the Court was made by **B.PUGALENDHI, J.**]

The petitioner has filed this miscellaneous petition seeking to suspend the sentence imposed upon him by the learned Principal Sessions Judge, Sivagangai, in S.C.No.30 of 2014, dated 27.09.2019.

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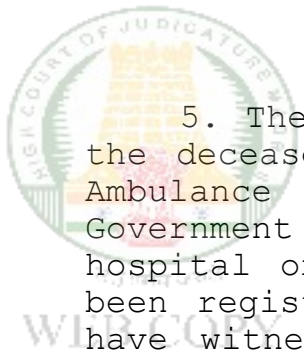
2. The petitioner was the sole accused and was charged for the offence under Sections 341 & 302 IPC. The trial Court, by judgment dated 27.09.2019, found him guilty for the said charges, convicted and sentenced him as follows:

Section of Law	Punishment
341 IPC	To undergo simple imprisonment for one month.
302 IPC	To undergo life imprisonment and to pay a fine of Rs.1000/-, i/d to undergo rigorous imprisonment for three months.

As against the judgment of conviction and sentence, the petitioner has preferred an appeal before this Court in Crl.A.(MD)No.188 of 2021. Pending the appeal, the petitioner has moved this application seeking suspension of sentence.

3. Learned Counsel for the petitioner submitted that the petitioner is having only one hand and the other hand, according to the prosecution, has been severed by the deceased twenty five years prior to the occurrence and on that motive, the petitioner was said to have stabbed the deceased on 21.05.2012 at about 05.00 pm. But the investigation agency has not collected any document to substantiate that there was any previous motive between the petitioner and the deceased. The trial Court, based on the evidence of PWs.1 & 2, found the petitioner guilty, convicted and sentenced him. PW1 was examined as the wife of the deceased, but, she is not the wife of the deceased and she is the wife of one Velayutham. She had developed some intimacy with the deceased and living with the deceased for sometime. PW1 admitted in her evidence that there was a quarrel between her husband Velayutham and the deceased, often, on this issue. However, the investigation agency without conducting any investigation, simply relied on the statement of PWs.1 & 2 and has filed the final report and the trial Court has also convicted the petitioner based on this evidence.

4. Learned Counsel further submitted that there is an inordinate delay in reporting the incident and the FIR reaching the Court. The occurrence is said to have taken place at 05.00 pm, the complaint was lodged at about 09.30 pm and the FIR was registered at 11.00 pm on 21.05.2012. But the printed FIR reached the concerned Court only on 22.05.2012 at 01.00 pm with a delay of 14 hours. This inordinate delay creates a doubt on the prosecution case and the presence of PWs.1 & 2 in the occurrence place.



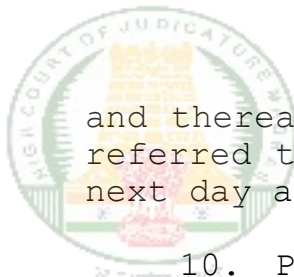
5. The eye witnesses, after the occurrence, said to have taken the deceased to the Government Hospital, Karaikudi by calling 108 Ambulance and from Karaikudi, the deceased was referred to the Government Rajaji Hospital, Madurai and the deceased died in the hospital on the next day on 22.05.2012 at 03.40 pm. The case has been registered after the death of the deceased, as if PWs.1 & 2 have witnessed the occurrence. Neither the Accident Register was placed before the Court nor the Doctor, who admitted the deceased at the Government Hospital, Karaikudi, was examined. He further submitted that the petitioner was languishing in the jail from the date of judgment, ie., from 27.09.2019 and therefore, requested for suspending the sentence pending the appeal.

6. Learned Standing Counsel for the State opposed for suspending the sentence stating that this is a case of direct eye witness. PWs.1 & 2 have witnessed the occurrence and they have also narrated the occurrence before the trial Court. Apart from that, the accused was also arrested and the weapon [MO1] - knife was recovered from him. The trial Court, based on the available materials, rightly convicted the accused and the grounds raised by the petitioner can be contested only during the final hearing.

7. This Court paid it's anxious consideration to the rival submissions and also to the materials placed on record.

8. The petitioner and the deceased are neighbours. Based on the complaint of PW1, the case was registered as against the petitioner that he stabbed the deceased on 21.05.2012 at 05.00 pm, on the previous motive that he was assaulted by the deceased and that his hand was severed by the deceased twenty five years prior to the occurrence. PWs.1 & 2 were examined as eye witnesses and they have stated about the incident before the trial Court. Apart from the evidence of PWs.1 & 2, the investigation agency has not collected any materials to substantiate that there was any incident as claimed by the prosecution that twenty five years prior to the occurrence, the deceased has assaulted the petitioner. But, in contra, the defence has raised a plea that PW1 is not the wife of the deceased and she is the wife of one Velayutham and she has developed some intimacy with the deceased. PW1 has also admitted in her evidence that there was some misunderstanding between her husband, Velayutham and the deceased in this regard. A suggestion was also made that the deceased was having similar illegal relationship with several other women, who are working as Mason.

9. The occurrence is said to have taken place on 21.05.2012 at 05.00 pm and at that time, the deceased was talking in PW2's residence and on hearing the sound, PWs.1 & 2 said to have rushed to the place of occurrence and found the petitioner assaulting the deceased with a knife. Immediately, they have arranged for an Ambulance and took the deceased to the Government Hospital, Karaikudi. At the hospital, a statement was recorded by the police



and thereafter, the case has been registered. The deceased was then referred to the Government Rajaji Hospital, Madurai and died on the next day around 03.40 pm.

10. PW1, in her evidence, has stated that the deceased was admitted from the place of occurrence to the Hospital only at 10.30 pm. According to her, the police have also reached the place of occurrence by then and they also secured the accused from a nearby temple. She further stated that she has taken the knife from the dead body and handed it over to the police. But the prosecution case is contradicting the same that the accused was secured only on 24.05.2012 at 01.00 pm and pursuant to his confession statement, the knife [M01] was recovered from his residence.

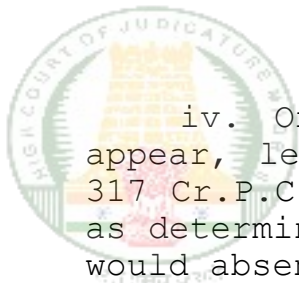
11. The case was registered by PW11 on 21.05.2012 at 11.00 pm, on receipt of intimation from the Government Hospital at about 09.30 pm. However, the printed FIR was handed over before the concerned Judicial Magistrate only on 22.05.2012 at 01.00 pm. There is a delay of 14 hours in FIR reaching the Court and there is no explanation for the same. In this context, the non-examination of the Doctor, who admitted the deceased at the Government Hospital, Karaikudi and the non-production of the Accident Register from the Government Hospital, Karaikudi are relevant. Though PW2 was said to have accompanied PW1 and the deceased to the Government Hospital and was also present at the time of recording the statement, the attestation of PW2 was not obtained in the complaint Ex.P1.

12. All these points would raise a reasonable doubt as to the presence of PWs.1 & 2 in the place of occurrence. The arrest and recovery are also doubtful. The petitioner is also inside the prison from the date of conviction, ie., from 27.09.2019. Considering the facts and circumstances of the case and that since the petitioner has made certain arguable points in his favour, this Court is inclined to suspend the substantive sentence of imprisonment imposed on the petitioner, 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 District Munsif cum Judicial Magistrate, Karaikudi.

ii. The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Court may obtain a copy of their Aadhar Card or Bank passbook to ensure their identity.

iii. The petitioner shall report before the learned Judicial Magistrate, Karaikudi at 10.30 a.m. on the first working day of every month, until further orders.



iv. 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.

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13. In the result, this miscellaneous petition stands ordered.

sd/-
20/07/2021

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

TO

- 1 THE PRINCIPAL SESSIONS JUDGE, SIVAGANGAI.
- 2 THE PRINCIPAL DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE,
KARAIKUDI.
- 3 THE JUDICIAL MAGISTRATE, KARAIKUDI.
- 4 DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
SIVAGANGAI DISTRICT.
- 5 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.
- 6 THE INSPECTOR OF POLICE
SAKKOTTAI POLICE STATION, SIVAGANGAI DISTRICT.
- 7 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.3005 of 2021
IN
CRL A(MD) No.188 of 2021
Date :20/07/2021

GK
MS/VR/SAR-2/20.07.2021/5P.8C